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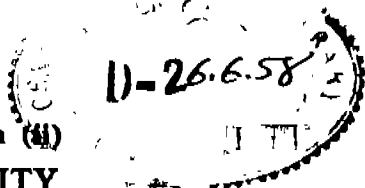
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EXTRAORDINARY

PART II—Section 3—Sub-section (4)

PUBLISHED BY AUTHORITY



No. 113] NEW DELHI, SATURDAY, JUNE 21, 1958/JYAISTHA 31, 1880

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 11th June 1958

S.O. 1201.—Whereas the election of Shri Lal Bahadur as a member of the House of the People from the Allahabad constituency, has been called in question by an election petition duly presented under Part VI of the Representation of the People Act, 1951 (43 of 1951), by Shri Mubarak Mazdoor, son of Late Shri Mohammad Husain Khan, 95, Daira Shah Ajmal, Allahabad City;

And whereas the Election Tribunal appointed by the Election Commission in pursuance of the provisions of section 86 of the said Act, for the trial of the said election petition, has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its order in the said election petition to the Commission;

Now, therefore, in pursuance of the provisions of section 106 of the said Act, the Election Commission hereby publishes the said order of the Tribunal.

IN THE COURT OF SHRI K. K. BANERJI, MEMBER, ELECTION TRIBUNAL,
ALLAHABAD

ELECTION PETITION No. 336 OF 1957

Shri Mubarak Mazdoor—Petitioner.

Versus

Shri Lal Bahadur—Respondent.

JUDGMENT

This election petition has been filed by one Shri Mubarak Mazdoor against the sole Respondent, Shri Lal Bahadur, praying that the election of the Respondent be declared void, a re-election be ordered and the costs of the petition be granted to him.

Paragraphs 1 to 6 of the petition refer to certain introductory matters which have not been denied by the Respondent. It appears from the facts stated in these six paragraphs that the petitioner and the Respondent were candidates for the election to the House of People from the Allahabad Parliamentary Constituency, No. 333, which was a Single Member Constituency in the last general election held in 1957. The last date for filing nomination papers was 29th January, 1957, and the date of scrutiny was 1st February, 1957. The last date of withdrawal of candidature was 4th February, 1957, during which time Shri Moti Lal Dwivedi and Shri Niranjan Lal Bhargava withdrew their candidature and only four candidates were left in the contest who were the Petitioner, himself, the Respondent, Shri Radhey Shyam Pathak and Shri Bholai Singh. It may be stated here that the Petitioner stood in this election as an independent

candidate, Shri Radhey Shyam Pathak stood on behalf of the Praja Socialist Party and Shri Bholai Singh for the Jan Sangh Party. The Respondent stood for the Congress. 25th of February 1957, was fixed for polling in the rural areas and 12th March, 1957, was fixed for polling in the Allahabad City area. The counting was completed on 13th March, 1957, and the result was announced on the very same day.

The petitioner alleges that although he had not withdrawn or retired from the contest, yet on the two dates of poll, his ballot boxes were not kept at the Polling stations and for this he was deprived of seeking the verdict of the electorate. It is stated by him further that somebody, impersonating him, presented a retirement form before the Returning Officer who, without making any inquiry as to the identity of the person presenting the same, forwarded the retirement form to the District Election Office. According to the Petitioner, he had signed a retirement form in course of certain negotiations going on between him and the Praja Socialist Party, but as these negotiations failed, he scored through his two signatures appearing on this form and kept it in his office from which it was surreptitiously removed by some interested person who presented it before the Returning Officer, after having impersonated him. He has said that the retirement was neither published in the Official Gazette nor in any local newspaper, for which reason he remained ignorant of the fraud. On the 25th of February, 1957, which was the first day for poll in this Constituency, the Petitioner came to know that his ballot boxes had not been placed at the polling stations, and on making due inquiry, he discovered the fraud as stated above, but, as it was too late to take any other action, he had to fall back on the only other alternative by presenting this election petition on the 27th of April, 1957. He has urged that due to these facts and circumstances, he was totally deprived of his electoral right to put himself up before the electorate and, thereby, the result of the election had been materially affected.

In paragraphs 14, 15, 16, 17 and 18 of the petition, the Petitioner has alleged commission of various corrupt practices by the Respondent, or his election agent and other agents with his consent. It has been alleged that the Respondent procured and took the assistance of Government servants and, thereby, violated the provisions laid down in Section 123, sub-Section (7) of the Representation of the People Act, that the Respondent had taken recourse to the practice of bribery, that he (Respondent), filed a wrong return of his election expenses and had exceeded the sum of Rs. 25,000 which, in law, the Respondent could spend legally for his election. It is stated that the Respondent did not maintain his accounts properly as required by Section 76 of the Representation of the People Act, concealed expenses and submitted a false statement of accounts. The petitioner, has also alleged the commission of another kind of corrupt practice, that is, the use of national flags by the Respondent and his supporters, by tying them on the motor vehicles while going about in the Constituency in the election campaign. The details of procuring and taking assistance from Government servants have been shown in Schedule 'A', the details about the bribery in Schedule 'B-1' and 'B-2'; the details about the excess of expenditure in Schedule 'C' and about the use of national flag in Schedule 'D'. It may be stated here that the particulars regarding the commission of corrupt practice by bribery as shown in Schedule 'B-1' was deleted by an order on 27th July, 1957, and the Petitioner, himself, gave up the charges as shown in Schedule 'B-2' (*vide* his statement to the Tribunal at Page 190 of his evidence). On a separate sheet, which is a part of the particulars of the amended Schedule 'A', the petitioner referred to commission of corrupt practices by advancement of threats given to certain voters and workers. The charges about these alleged threats have also been given up by the Petitioner. He has stated at page 190 that he did not lead evidence regarding threats said to have been given to the voters and the workers whose names appear in his amended Schedule 'A'. He has further stated that he did not give any evidence about any inducement to the voters and his workers as given in amended Schedule 'A'. Hence, the present inquiry about the commission of corrupt practices will centre round the following charges, namely, procuring and taking assistance from Government servants, expenditure over Rs. 25,000, together with concealment of expenses and submission of false statement of accounts, failure to maintain the account as required under Section 77 of the Representation of the People Act and the use of the national flag on the motor vehicles which were being plied by the Respondent or others on his behalf at the time of the election campaign.

It is alleged in paragraphs 19 and 20 that the Respondent was not an elector and his name was not in the copy of the electoral roll kept at Mutthiganj Polling station. In paragraph 20, an incident at Mutthiganj polling station has been

related, saying that the Respondent was not allowed to vote. It was urged on the strength of these two paragraphs that Respondent was wrongly nominated and the Respondent's nomination paper was wrongly accepted.

Paragraphs 21, 22, 23, 24, and 25 speak of contravention of Article 14 of the Constitution of India by reason of allotting of the same symbol by the Election Commission to the Congress and also for supplying free copies of the electoral rolls to the candidates of the recognised parties. It has been stated that the Congress candidate obtained a superior advantage over the Petitioner as the Congress was given the very same symbol in 1952 election and was allowed to retain the same symbol in the 1957 election, whereas the Petitioner was given his symbol only 20 days before the date of poll. As regards the supply of free copies of electoral rolls, it has been stated that the petitioner had to purchase the electoral roll by paying its price, whereas the Respondent got the same free of cost, which amounted to discrimination. According to the Petitioner, there has been gross Violation of Article 14 of the Constitution of India as equality before the law has been denied to him.

The Respondent has filed his written statement denying the allegations made in paragraphs 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25. It has been stated in paragraph 7 of the written statement that the Petitioner had in fact and in law retired from the election contest, that neither on the following dates nor at any other time did the Petitioner make any protest or take any steps to assert his right to contest at the election or to bring to light the alleged fraud, that Shri U. S. Dixit mentioned in Schedule A of the petition was not a Government servant, that all expenses incurred by the Respondent had been duly shown in the return, that he was an elector and his name was duly entered in the electoral roll of the Constituency, that there was no objection by the Petitioner or any one else at the time of the nomination, that there was no discrimination by the Election Commission, that the Petitioner's own return did not show of any purchase of any copy of the electoral roll, that the Petitioner's electoral right, if any, had been extinguished by his conduct in signing the retirement form and by his acquiescence, for which he is estopped from challenging the fact and that the result of the election had not been materially affected. In this connection it has been stated in paragraph 29 of the written statement that the Respondent polled 124896 votes, Shri Radhey Shyam Pathak, the Praja Socialist Party candidate polled 68864 votes and Shri Bholai Singh, the Jan Sangh candidate polled 20054 votes. On these facts alleged by the Petitioner, the following issues have been framed:—

1. Whether the Petitioner retired from the Election?
2. Whether any one presented the form of withdrawal by practising fraud on the Petitioner?
3. Whether the alleged retirement was lawful?
4. Whether the Petitioner was deprived of any electoral rights?
5. Whether the facts contained in Schedule 'B(2)', read with paragraph 18, are correct, and, if they are, whether there was any connection between the alleged withdrawal of the cases and the Respondent?
6. Whether the Respondent was an elector and whether his name was on the electoral roll of the Mutthiganj polling station?
7. Whether the Respondent was wrongly nominated and whether the result of the election was materially affected by the facts mentioned in paragraphs 19 and 20 of the petition?
8. Whether any objection was raised to the nomination of the Respondent on the ground alleged in the petition, if not, can the Petitioner raise the objection now?
9. Whether Article 14 of the Constitution had been contravened?
10. Whether the election has been rendered invalid and whether the same, has been materially affected by the facts alleged in paragraphs 22 and 24 of the petition?
11. Whether free copies of the electoral roll were supplied to the Respondent and whether the Petitioner had to purchase the same on payment of price?
12. Whether the petition is legally maintainable?

13. To what relief, if any, is the Petitioner entitled?

To these issues, there was another added on 4th November, 1957, which runs as follows:—

Whether the facts contained in new Schedule 'A' read with old paragraph 15 the facts contained in new paragraph 17 and new Schedule (C) and the facts contained in old paragraph 18 and new Schedule (D) are correct?

Issue Nos. 1 and 13 were framed on 19th August 1957, after deletion of certain paragraphs and Schedules. Thereafter, the Petitioner took the matter before the Hon'ble High Court, and a direction was given to me in its judgement that the Petitioner should be given an opportunity to amend and amplify the petition according to law. Accordingly, a fresh opportunity was given to the Petitioner, as a result of which there were some amendments and amplification as prayed for and a fresh issue was framed on 4th November, 1957.

Besides the Petitioner, 22 witnesses have been examined on his behalf. The Respondent has examined himself and has also examined 34 witnesses.

I shall take up the charges levelled by the Petitioner against the Respondent under different heads and shall first of all deal with issues Nos. 9, 10 and 11.

Issues Nos. 9, 10 and 11.—The Petitioner has argued that the Government of India and the Election Commission entered into a conspiracy to frame such laws and rules, which may put the Congress party, which is at present the ruling party, and its satellite parties, the Communists, the Praja Socialist Party and the Jan Sangh into an advantageous position over other parties like the Socialist Party, the Forward Block, the Revolutionary Communist Party, the R.S.P.I. Party, the Ganatantra, the Janata, the Hindu Maha Sabha and the Muslim League. This argument I have quoted by taking down *verbatim*, what was urged by the Petitioner. There is no material about such alleged conspiracy and there was no whisper about the same in the election petition. The paragraphs of the election petition, referring to this matter, are 21, 22, 23, 24 and 25. In Paragraph 21, it was merely stated that the whole procedure of the election was unconstitutional being in contravention of Article 14 of the Constitution of India. In Paragraph 22, it was stated that rule 5 of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956 gave an unrestricted and uncontrollable power to the Election Commission in the matter of the choice of the symbols and the Election Commission evolved the theory of recognised parties and allotment of the symbols to them, while the same facility was denied to other political parties and independent candidates, which resulted in an advantage to the Congress and other recognised parties inasmuch as use was made of the symbols by these parties for about 6 years, whereas, the petitioner could bring before the electors his own symbol for a short span of 20 days only. Paragraph 23 and 24 refer to supply of free copies of electoral rolls by the Election Commission to the candidates of the so-called recognised parties while the Petitioner had to purchase the same by paying its price. In paragraph 25, it was stated merely that these were discriminatory and the result of the election had been materially affected by these discriminations. There was nothing in these paragraphs to suggest a conspiracy between the Government of India and the Election Commission. It is, again, too much to accept for a moment that such parties as the Communists, the Praja Socialist and the Jan Sangh were ever or are parties dependent on the Congress. According to rule 5 of the Representation of the People (Conduct of Elections and Election Petitions) Rules of 1956, the Election Commission shall, by notification in the Official Gazette, publish a list of symbols and may in like manner amend such lists. According to sub-rule (1) of the same Rule 5, in constituencies other than Council Constituencies, every nomination paper presented under sub-section (1) of section 33 of the Representation of the People Act, 1951, shall contain a declaration specifying the particular symbol which the candidate has chosen for his first preference out of the list of symbols published under sub-rule (1) and two other symbols out of that list which he has chosen for his second and third preferences, respectively. There is a proviso attached to this Rule 5, and clauses (a) and (b) are in these words:—

“(a) The choice to be made by a candidate under this sub-rule shall be subject to such restrictions as the Election Commission may think fit to impose in that behalf; and

- (b) where more nomination papers are delivered by or on behalf of a candidate, the declaration as to symbols made in the nomination paper first delivered and no other declaration as to symbols shall be taken into consideration notwithstanding the eventual rejection of the same nomination paper”.

There is a further proviso which states that non-compliance with the provisions of this sub-rule shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of Section 38 of the Representation of the People Act. This rule has been framed primarily to avoid clashes of symbols allotted to parties concerned. Many voters in India are illiterate and it is difficult for them to read the names of the parties on the ballot boxes, but it is easy for them to remember a symbol which is nothing but some picture or figure representing a particular candidate or a party. This is clear by rule 23 which relates to preparation of ballot boxes for poll and lays down that the symbol allotted to each candidate under sub-rule (1) of Rule 10 shall be printed on tables which shall be affixed both inside and outside the ballot box, and such ballot box shall thereafter, be deemed to have been allotted to that candidate. Rule 10 relates to allotment of symbols to each contesting candidate in conformity, as far as practicable, with his choice, and if more contesting candidates than one have indicated their preference for the same symbol it is to be decided by lot to which of such candidates the symbol will be allotted. According to sub-rule (2) of Rule 10, the allotment of the symbol of the Returning Officer to a candidate shall be final, except where it is inconsistent with any directions issued by the Election Commission in this behalf, in which case, the Election Commission may revise the allotment in such manner as it thinks fit. I fail to see in these rules any evidence of preference given to a party putting the others to a disadvantage. It is true that Congress had the same symbol of two bullocks with a yoke in 1952 and the same symbol has been allotted to this party in 1957. But admittedly, the other parties, such as the Communists the Praja Socialist and the Jan Sangh were also allowed to keep the same symbols which they had used in 1952. There is nothing in the Act and the Rules to show that if a party chooses a particular symbol in a particular election and the same is allotted to them in that election, they cannot seek for the allotment of the same symbol in the next or other elections. A difference has to be made between parties whose lines of propaganda, their manifesto, their creed, continue from election to election to be almost the same and other parties and independent candidates having no continuity of fixed principles. In the present petition, I have to deal with an independent candidate and the Congress, as no other party has come forward with the grievance in the matter relating to the allotment of symbol, nor, has the name of any such aggrieved party been disclosed in paragraph 23 of the election petition. A person standing as an independent candidate in one election may not choose to contest in the next, and there is no certainty about what he will put forward before the electorate as to the nature of services he is going to render. The Congress, being a party has a definite programme which they are bound to place before the electorate in each election, whereas, an individual standing as an independent candidate lacks that continuity is confined to that election alone, and in this view of the matter, it can hardly be said that the same symbol should not have been allotted to the Congress and that the Respondent in this case secured an advantage over the Petitioner.

It has been argued by the Petitioner that there has been discrimination in the grant of free copies of electoral rolls to recognised parties. It is said that he had been put to a position of disadvantage as the Respondent got a copy of the electoral roll free of any charge and, therefore, his election campaign was more easy and facile than that of the Petitioner. According to Petitioner opportunities to work the electorate in favour of the Respondent were far greater than in his case. It is conceded that the Respondent, himself, did not get a free copy of the electoral roll of this constituency from the Election Commission. If he had utilised any such copy, it was one which was given to the Congress Party. The Respondent has stated at page 148 of the evidence that he, personally, did not receive any copy of the electoral roll from the District Election Office, and that the Congress party got a copy of the electoral roll from the Election Office free of cost. The case of the Petitioner in his pleading was that he had to purchase the electoral roll by paying its price (paragraph 23 of the petition). At page 122 of the evidence, the Petitioner stated as follows:—

“Shri Lal Bahadur was a candidate of the Congress party and Shri Lal Bahadur also received a free copy of the electoral roll on the ground of his being a candidate of the Congress party which was recognised by the Election Commission. I was required to pay the cost. It is not necessary for any candidate to buy an electoral

roll. The free distribution of the electoral roll to Shri Lal Bahadur and other candidates of the recognised parties was a violation of Article 14 of the Constitution of India. It gave an advantage to Shri Lal Bahadur over me. The cost of an electoral roll in a parliamentary Constituency is huge".

When he was confronted in cross-examination on this point, he stated at page 160 that he did not purchase the copies of the electoral roll. When his attention was drawn to paragraph 23 of his petition, he said that there was an error in typing. He had to admit that he had to go through his petition on the date of verification of the same on the 27th April, 1957, and on that date and also on 21st October, 1957, when he got certain paragraphs amended, there was no attempt made to amend the statement in paragraph 23. When he was confronted with his statement in examination-in-chief, his reply was as follows:—

"What I meant was this that private candidates were required to pay the cost if they wanted to buy a copy of the electoral roll. I have not said in my statement that I had purchased the copy. I never got the copies of the electoral roll in my election from 333, Allahabad Parliamentary Constituency in 1957."

It is clear to me, therefore, that the Petitioner did not spend a single shell for getting copies of the electoral roll and that there has been a total departure from the charges which he levelled against the Respondent in paragraph 23 of his petition. There can be no case of any discrimination or undue preference when, according to the Petitioner, himself free copies of electoral rolls were granted by the Election Commission to all recognised parties. On the admission by the Petitioner now that he did not purchase any copy of the electoral roll, the question of discrimination or preference does not arise. The Petitioner, at several places in his evidence, has repeatedly stated that his method of propaganda and canvassing was completely different from others. He did not print any posters or leaflets, he did not issue any manifesto; he did not convene or address any meeting and his campaign was confined to approaching the voters from door to door and to write on walls with charcoal that he had stood as a candidate in that particular constituency. In a campaign of such character, there was hardly any necessity to get a copy of the electoral roll of this constituency. According to his own statement, he could not have suffered in any way because he could not obtain a copy of the electoral roll. At page 131 of his evidence, he said that he had about 1,20,000 and more solid votes of Hindus, Muslims and Christians which could not be broken by any candidate of any party. When he was asked the reason why he did not appoint any election agent or polling agent when he left the constituency and went away to Calcutta, his reply at page 133, was that he was so much confident of his voters and of his success that the presence of any election or polling agent would not have in any way helped him. In this very page he evaded the question if any one was in charge of canvassing in his constituency during his absence and admitted that no leaflet or poster was printed. He added in this connection that on walls of the town and the villages, the public itself had put his name and symbol with chalk or charcoal.

From all these discussions it is abundantly clear that he was not affected in any way by the granting of free copies to the recognised parties by the Election Commission and that the result of the election could not have been materially affected as, if the Petitioner had been in the contest and not retired, he was sure to obtain more than 1,20,000 solid votes from all communities concerned, which votes, it was emphasised by the Petitioner could not be broken by any candidate or any party, including the Respondent. Accordingly, these three issues cannot but be answered against the Petitioner. I hold that there has been no violation of Article 14 of the Constitution. I also hold that the election has not been rendered invalid by the facts alleged in paragraphs 22 and 24 of the petition. The result of the election has not been materially affected by the facts alleged by the Petitioner. I further hold that the Petitioner had not to purchase copies of the electoral roll on payment of price and that the same were not supplied to the Respondent free of cost. They were supplied free of cost to the Congress party, of which he was a candidate.

Issue No. 6.—I shall now consider issue No. 6, "Whether the Respondent was an elector and whether his name was on the electoral roll of Mutthiganj polling station?" This issue has been framed on the pleas taken in paragraphs 19 and 20 of the petition. In paragraph 19, it has been stated that the opposite party was not an elector and his name was not in the copy of the electoral roll kept on the Mutthiganj polling station and therefore, he was, wrongly nominated.

It may be noted here that the Petitioner does not state specifically about the absence of the Respondent's name as an elector in the electoral roll. His grievance is that his name could not be found in the copy of the electoral roll, for which reason his nomination was wrong. Paragraph 20 of the petition is merely amplification of paragraph 19 and speaks of an instance where the Respondent was not allowed to vote at a particular polling station, and from this the petitioner wants to conclude that the Respondent was not an elector from his residence, 209, Mutthiganj, Allahabad as shown in the nomination paper. On the strength of this instance, it is stated in paragraph 20 that the nomination of the opposite party was wrongly accepted and this has materially affected the result of the election. It has been said in paragraph 20 that on the polling date, that is, on 12th of March, 1957, the Respondent went to the polling station to cast his vote when the polling agent of Shri Radhey Shyam Pathak objected to his being an elector and voter in that constituency as his name had been struck off from the roll.

Whether the Respondent was or was not an elector in the constituency concerned has to be answered with reference to section 2, clause (e) of the Representation of the People Act, 1951. This clause describes an elector in this way:—

“Elector’ in relation to a constituency means a person whose name is entered in the electoral roll of that constituency for the time being in force and who is not subject to any of the disqualifications mentioned in section 16 of the Representation of the People Act, 1950”.

Now, there is a Procedure laid down how a person's name is to be entered in the electoral roll of a constituency. Section 13D of the Representation of the People Act, 1950, says that the electoral roll for every Parliamentary Constituency other than a Parliamentary Constituency in an Union Territory shall consist of the electoral rolls of so much of the Assembly Constituency as are comprised within that Parliamentary Constituency; and it shall not be necessary to prepare or revise separately the electoral roll for any such Parliamentary constituency. So, it appears that the electoral roll for the Assembly Constituency and the Parliamentary Constituency is, virtually, to be the same. Section 16 of this Act mentions the disqualifications for registration in an electoral roll, and it is conceded that the Respondent does not suffer from any of the three disqualifications enumerated in this section. According to section 17 of the same Act, no person is entitled to be registered in the electoral roll for more than one constituency in the same State, and according to section 18, no person shall be entitled to be registered in the electoral roll for any constituency for more than once. It is not the case of the Petitioner that the Respondent has been registered in the electoral roll for more than one constituency in the same State or that he has been registered in the electoral roll for the constituency more than once. His grievance is that although the Respondent was registered in Part C of the electoral roll on the strength of which he filed his nomination paper, he cast his vote on the strength of an entry No. 2409 which was an entry in the general electoral roll. To this, I shall advert later on when I shall take up the objections on the point raised by the Petitioner one by one.

Section 19 of the same Act lays down the conditions of registration, stating that every person shall be entitled to be registered in the electoral roll of that constituency who, on the *qualifying date*, (the underlining is mine) is not less than 21 years of age and is ordinarily resident in a constituency. The Respondent, admittedly, is over 21 years and the matter to be decided is whether he was on the qualifying date ordinarily resident in the constituency concerned. He has a house in Allahabad town in an area known as Mutthiganj, and the number of his house is 209A. Section 20 of the Act gives the meaning of the words “ordinarily resident” in these words:—

“Section 29 (1), Save as hereinafter provided, a person shall be deemed to be ordinarily resident in a constituency if he ordinarily resides in that constituency, or owns, or is in possession of a dwelling house therein”.

It has been brought out in the evidence of the Respondent that the house at Mutthiganj is a rented one and, at present, on account of his being a Minister of the Union, he has been living at Delhi. The Petitioner has stressed in this connection that a dwelling house on rent cannot, in law, be said to be in possession of a person. I do not think this argument is sound. When this dwelling house is on rent and the rent is being paid by the Respondent, it cannot but be said, that he, alone, is in possession of it, unless it is proved, *alibi*, that he has been dispossessed by someone. It is not the case of the Petitioner that the Respondent has been dispossessed by any one from this dwelling house at No. 209A, Mutthiganj, Sub-section (4) of section 20 of the same Act creates a kind of fictional residence as distinguished from a factual one and states that

any person holding any office in India declared by the President in consultation with the Election Commission to be an office to which the provision of this sub-section apply, shall be deemed to be ordinarily resident on any date in the constituency in which, but for the holding of any such office, or employment, he would have been ordinarily resident on that date. There can be no doubt that if the Respondent had not been holding the office of a Minister he would have been a resident of 209A, Mutthiganj. It is accepted that at the time of the preparation of the electoral roll in 1950, and its revision in the year 1956, the Respondent was a Minister and was holding an office in India declared by the President in consultation with the Election Commission to be an office to which the provisions of this sub-section apply. Exhibit 9 is that notification No. S.R.O. 307, dated 29th July, 1950. Shri D. S. Faujdar, the District Election Officer (P.W. 10) has proved this notification (See P. 32 of the evidence) and has stated at page 38 that this notification was published on 29th July, 1950. At page 29 of the evidence he has deposed that the electoral roll was printed in the year 1952, and thereafter lists of correction slips were printed. At page 38 he has further deposed that the same electoral roll for Assembly Constituency holds good for Parliamentary Constituency, and has further said at page 31 that the final publication of the electoral roll was published on 11th October 1956. According to sub-section (5) of section 20 of the same Act, the statement of any person referred to in sub-section (4) made in the prescribed form and verified in the prescribed manner shall, in the absence of evidence to the contrary, be conclusive evidence of the fact that but for his holding any such office or being employed in any such post as is referred to in sub-section (4) he would have been ordinarily resident in a specified place. This specified place for the Respondent was 209A, Mutthiganj, Allahabad. It appears from this sub-section, therefore, that the statement of the Respondent made under this sub-section cannot be challenged now by the Petitioner. The Statement which is required to be made under section 20 is to be in accordance with the terms of rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956. This rule provides as follows:—

1. Every person who (a) is a member of the Army Forces of the Union, or (b) is holding any office to which sub-section (4) of section 20 applies, or (c) is employed under the Government of India in a post outside India, and desires to be registered in the electoral roll for the constituency in which but for his service in the Army Force or but for his holding of any such office or being employed in any such post, as the case may be, he would have been ordinarily resident on the qualifying date, shall submit before the 1st day of April, to the Chief Electoral Officer of the State, in which that constituency is situated a statement in such one of the Forms 1A, 1B, 1C as may be appropriate.

The Form 1B under rule 7 has been printed at page 177 of the Manual of Election Law (2nd Edition) published by the Government of India, in the Ministry of Law, it is to be declared here that the person concerned is a citizen of India and that but for his holding the above mentioned office, he would have been ordinarily resident on the 1st of March of the year in question at a particular address. Now, there cannot be any doubt that a declaration of such a statement was made by the Respondent according to section 20, sub-section (5) of the Representation of the People Act, 1950, read with rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956. Shri Faujdar (P.W. 10) has deposed about this fact and has proved a letter, Exhibit 3, written by the Private Secretary to the Minister, Shri Lal Bahadur Shastri. This letter is addressed to Shri Raina, who was the Returning Officer at that time, and is in the following words:—

“Dear Shri Raina,

I am desirous by Shri Lal Bahadur Shastriji to thank you for your letter No. 125-Elec., dated 9th of June, and to return herewith, duly filled in Form 1-B which you had send me for favour of further action”.

This letter is to be read with Exhibit 4 which is a carbon copy of the letter of Shri Raina dated the 9th of June 1956, in which it was stated that copy of Form 1-B was enclosed according to the provisions of Rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules, 1956. Shri Faujdar has stated at page 28 that this form, which he described as an application form, duly filled in by Shri Lal Bahadur was not in the file brought by him, and added at page 30 of the evidence that the Form 1-B which was sent to Shri Lal Bahadur

was not in his office. He explained that it was with another similar form lying somewhere in bundles as no value was attached to them after the names of those persons who had filled them up, were entered on the electoral roll. He has, however, deposed about the letter, Exhibit 4, as well as the letter Exhibit 3. He has stated at page 31 that as soon as he received the application, (to be more accurate statement) of the Respondent in Form 1-B for inclusion of his name in Part C, his name from general electoral roll was automatically eliminated and was taken in part C of the electoral roll. Again, at page 36, he reiterated that the Respondent was a Minister at the Centre when he made an application for inclusion of his name in Part C of the Electoral roll and on the strength of that application, his name was deleted from the general electoral roll and entered in part C of the electoral roll. At page 38, he, further, deposed that the letter, Exhibit 3, was accompanied by Form 1-B issued under section 20, sub-section (4) of the Representation of the People Act and in pursuance of that letter and statement made in that form he entered the name of the Respondent in Part C of the electoral roll. He also deposed in continuation of the same that part C of the electoral roll was a part of the electoral roll of a particular Assembly Constituency and the same electoral roll for Assembly Constituency held good for Parliamentary Constituency. No adverse inference can be drawn against the Respondent for the non-production of the declaration of statement in Form 1-B which has either been lost or mislaid in the office. The evidence of P.W. 10 has not been challenged, and it has to be accepted that all official acts were done in the usual course and the transposition of the name of the Respondent to Part C would not have been made by the District Election Officer, unless, in fact, he did receive as stated by him on oath, a declaration of the statement in Form 1-B by the Respondent who, at that time was a Cabinet Minister of the Union.

The transposition of the name of the Respondent in Part C of the electoral roll is further proved by the examination of the different parts of the electoral roll proved by the Petitioner, himself. Exhibit 5 is one set of the electoral roll, and the entry No. 2409 [Exhibit 5 (a)] shows the name of the Respondent, Lal Bahadur Shastri, son of Sharda Prasad, 209A. This entry has not been scored through. Another set of the electoral roll of Mutthiganj, Exhibit 10(a) shows the same entry in the same name, parentage and address as in Exhibit 5(a) with this difference that the entry has been scored through in red ink, similar is the case with another set of the electoral roll of Mutthiganj (Exhibit 10), and another entry in another different set which has been marked Exhibit 11. It appears, therefore, that the name of the Respondent against entry No. 2409 in the general part in three different sets of the same electoral roll, namely, Exhibit 10, 10(a) and 11 was scored through in red ink. The name of the Respondent in Exhibit 5 (a) was not scored through, as it appears from this electoral roll that this copy was not used at any polling station. The other three sets of the same electoral roll, namely, Exhibits 10, 10(a) and 11 are marked copies showing their use at the polling station. The correction and revision of the electoral roll of Mutthiganj, has been proved by Exhibit 5(b). At page 10 of this revised list the entry is shown thus:—

"487—2409—209A—Lal Bahadur Shastri—*Nam kata gaya.*"

These words "*nam kata gaya*" are in the column noted as "*Suddhi tatha upmarjan ka swarup*". There cannot be any iota of doubt, therefore, that action was taken on the declaration of statement by the Respondent under section 20 of the Representation of the People Act, 1950 read with rule 7 of the Representation of the People (Preparation of Electoral Rolls) Rules of 1956, and his name was removed from the general electoral roll. This elimination of the name of the Respondent from the general electoral roll was followed by the transposition of his name in Part C of that roll, and this has been marked Exhibit 8(a). The name of Shri Lal Bahadur is shown in the column of the voter and his serial number has been shown as No. 1. Under the heading, "*Ordinary residence*" it is stated 209, Mutthiganj, Allahabad, and in the 4th column, "*Pad ka nam/dak ka pata*" (Office and postal address), it is printed "*Minister for Transport and Railway, New Delhi*".

The position, therefore, is this. The Respondent was a resident of 209A, Mutthiganj at Allahabad in the year 1950 when he was a Cabinet Minister. He continued to be in possession of this dwelling house till now, although for the sake of his office he has at present to reside in New Delhi. In 1950, the President of India, in consultation with the Election Commission, in exercise of the powers conferred by sub-section (4) of Section 20 of the Representation of the People Act, 1950, (Act XLIII of 1950), was pleased to declare the office held by the Respondent then to be an office to which the provisions of the said sub-section applied. The electoral roll was printed in the year 1952. Thereafter, lists of

correction slips were printed. After receiving the declaration or statement in Form 1-B the name of the Respondent was transferred from the general part to Part C of the same electoral roll. After the final publication of this electoral roll on 11th October, 1956, the Respondent resigned from his office on 25th November, 1956, which was duly notified on 7th December, 1956. On the date of the election, the Respondent was not a Minister but a Member of the Rajya Sabha. On the date of the election, the Respondent's name was in part C of the same electoral roll of the constituency. The provisions of sections 17 and 18 of the Representation of the People Act, 1950, have not been contravened, and there was no disqualification for registration of the Respondent in the electoral roll. The conditions of registration under section 19 of the same Act were fully satisfied as on the qualifying date, the Respondent was more than 21 years of age and was ordinarily resident in the constituency within the meaning of both, section 20 sub-section (1) and section 20 sub-section (4) of the same Act. In law, "the qualifying date" in this case in relation to the revision of the electoral roll was the first day of March, 1956, as it was in that year that the electoral roll was revised and finally published. Accordingly, the Respondent has fully satisfied the requirements given under the definition of the word "elector" in section 2, clause (e) of the Representation of the People Act, 1951. I have only to see in this connection whether the name of the Respondent stood at some place in the electoral roll. It does not matter whether his name was entered in the general electoral roll or in another part of the same electoral roll, that is, in part C. The registration of his name in Part C gave him an extra advantage to cast his vote by postal ballot. It can never be argued that because of the removal of his name from the general part, the Respondent ceased to be an elector. In fact, his name remained in the same electoral roll, with this difference that it was shifted from one part to another. I hold, accordingly, that the Respondent was an elector and his name was on the electoral roll of the Mutthiganj polling station. This issue is, therefore, answered against the Petitioner and in favour of the Respondent.

Issue No. 7.—This issue relates to the question whether the Respondent was wrongly nominated and whether the result of the election was materially affected by the fact mentioned in paragraphs 19 and 20 of the petition. The issue has strong bearing on issue no. 6 which was based on paragraph 19, alleging that the Respondent was not an elector. In the same paragraph, it was stated that not being an elector, and his name not being in the copy of the electoral roll kept at the Mutthiganj polling station, he, the Respondent, was wrongly nominated. The point was repeated in paragraph 20, and it was stated that the nomination of the Respondent was wrongly accepted which was evident from the fact that when Shri Lal Bahadur on 12th March, 1957, went to the polling station to cast his vote, the polling agent of Shri Radhey Shyam Pathak objected to his being an elector in that constituency as his name had been struck off from the roll. It was also stated that the Respondent for that reason was not allowed to vote. This allegation is incorrect, as will be shown by the examination of the evidence on this point. What happened was this, as stated by the Respondent (R. W. 35). At Page 134, he has said that he went to the polling booth and asked for one ballot paper for the Assembly Constituency. After getting it, he cast his vote and then went to the adjoining table and asked for the ballot paper for the Parliamentary Constituency. When there was discussion between him and the polling clerk about the absence of his name in the copy of the electoral roll before him, the polling agent of the Socialist Party protested. The Presiding Officer was then sent for and when he came he looked into another copy of the electoral roll and told the Respondent that he was willing to issue the ballot paper to him for the Parliamentary Constituency. On this, the Respondent told him that he did not like to annoy the agents of the rival party who were still objecting and after declining to take the ballot paper, he went out without casting his vote for the Parliamentary Constituency. He is supported by P.Ws. 1, 2 and 19 who have given the same story in substance with a little variations here and there. P.W. 1 has stated that the Respondent came to the polling station for the purpose of exercising his franchise and obtained a ballot paper for the Assembly seat. When the Respondent was asking for the ballot paper for the Parliament, P.W. 1 objected because his name had been struck off in red ink from the roll, on which the Respondent went away. P.W. 2 is the Presiding Officer who was sent for as already stated. He has deposed that he was asked by the Respondent to find out why his name did not exist in the electoral roll which was meant for casting his vote in the Parliamentary Constituency. The Polling Officer had only one electoral roll, both for the Assembly and the Parliament. P.W. 2 looked into another copy of the electoral roll and found the name of the Respondent present in that roll. He discovered that the particular page having the name of Shri Lal Bahadur Shastri was missing from the electoral

roll which was with the Polling Officer. He then asked the Polling Officer to issue one ballot paper to the Respondent but the latter declined to take the ballot paper and left the polling station. P.W. 19, Shri Vishwa Nath Gupta, was at the same polling station when the Respondent was asking for his ballot paper from the polling clerk at the Parliamentary booth. He says that the Presiding Officer was sent for and he came back and compared another electoral roll. After comparison, the Presiding Officer told the Respondent that as there was no cutting in the electoral roll, he would be allowed to cast his vote, but he declined, and left the place. From the evidence of these witnesses it is clear that the statement made in paragraph 20 of the petition to the effect that the Respondent was not allowed to vote is incorrect.

I cannot understand the reasoning of the petitioner how, for this incident at the polling station, the nomination of the Respondent was wrong and bad in law. I have already held that the Respondent was an elector. Article 84 of the Constitution of India furnishes the qualifications for membership of Parliament. According to this Article, a person shall not be qualified to be chosen to fill a seat in Parliament unless he, (a) is a citizen of India; (b) is not less than 25 years of age; and (c) possesses such other qualifications as may be prescribed in that behalf by or under the law made by Parliament. It is not the case of the Petitioner that the Respondent was not qualified for a seat in the Parliament as he was lacking in the qualifications mentioned in Article 84. Article 102 refers to the disqualifications for membership of either House of Parliament and the disqualifications mentioned therein do not reach the Respondent. From clause (2) of this Article, it appears that a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister, either for the Union or for such State. According to section 79, clause (d) of the Representation of the People Act, 1951, "electoral right" means the right of a person to stand or not to stand as, or to withdraw from being a candidate or to vote or to refrain from voting at an election. Once a person is registered as an elector and his name is entered in the electoral roll of a constituency, and he is not subject to any disqualification, it follows that he acquires the electoral rights to either vote or not to vote and either to stand or not to stand as a candidate. I fail to understand, therefore, how it can be argued in this case, regard being had to the findings and discussions mentioned above, that the Respondent was wrongly nominated. I have looked into the nomination papers of the Respondent which are Exhibits 1 to 1(d). In these nomination papers he has filled up the heading No. 5, "Electoral Roll No. of Candidate" as follows:—

333, Allahabad.....(Parliamentary Constituency)/173 Allahabad City South Assembly Constituency/Part C; and Serial No. 1. The date under this heading is given as 29th January, 1957. The nomination papers were therefore, filed on the basis of the entry of the Respondent's name in Part C of the electoral roll and there was nothing illegal in depending upon this entry of the electoral roll, when the qualifying date for the conditions of registration under section 19 of the Representation of the People Act of 1950 was 1st of March, 1956, by virtue of the operation of section 14, clause (b) of the same Act. The electoral roll having been finally published in accordance with the requirements under section 19 and 14, clause (b) of this Act, it is doubtful whether it was open to the Respondent to apply for cancellation of his name in Part C and for its restoration in the general part. I am of opinion that in the state of law, as it exists, the Respondent was bound to depend on the finally published electoral roll of this constituency and, accordingly, was fully justified in having the nomination forms filed on the basis of his entry in Part C of the electoral roll. There is no prohibition against the name of an elector appearing in any part of the electoral roll for the same constituency and once the name is registered, the matter is concluded and he becomes an elector according to the definition of the term. I hold, accordingly, that the Respondent was not wrongly nominated and that his nomination form was not wrongly accepted. The transposition of his name to Part C did not affect the result of the election and was not material to the question of the right of the Respondent to be nominated, because he remained an elector in spite of the transposition and the transposition, as already stated, gave him merely a facility over others, that is, to exercise his right of franchise by postal ballot.

Section 100 of the Representation of the People Act, 1951 lays down the grounds for declaring an election to be void. A Tribunal can only declare an election to be void, in connection with nomination when according to sub-section (1) clause (c) of section 100, the nomination has been improperly rejected. By no stretch of imagi-

nation, it can be argued that the present case falls within the scope of section 100, sub-section (1) clause (c). The burden was, therefore, on the petitioner to prove that there had been non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951, or of any rules or orders made under this Act, for which reason according to clause (d) of sub-section (1), the result of the election, in so far as it concerned the Respondent, who is the returned candidate, has been materially affected. There is nothing on the record to show how, by transposition of the name of the Respondent from one part to the other part, there has been an infringement of any provision of the Constitution, or of the Act or of any rules or orders made under the Act and how the result of the election has been materially affected. This issue is, therefore, answered in favour of the Respondent, and I hold again that the Respondent was not wrongly nominated and, further, that result of the election had not been materially affected, either by the facts mentioned in paragraphs 19 and 20 of the petition or by any other facts or consideration raised by the Petitioner afterwards during argument.

Issue No. 8.—This issue raises a question of fact whether an objection was raised to the nomination of the Respondent on the grounds alleged in the petition, and, if not, whether the Petitioner can raise the objection at this stage. It appears from Exhibit 18, dated 1st of February, 1957, that an objection was raised by the Petitioner against the nomination of the Respondent but not on the lines taken in the petition or afterwards in his argument. Exhibit 18 is the order of rejection of the objection by the Returning Officer, Shri Raina (R.W. 15). It is better if the entire order is quoted here. It is in the following words:—

“Objection has been taken by Shri Mubarak Mazdoor that Shri Lal Bahadur cannot seek election in the House of People without resigning his seat as a Member of the Raj Sabha. I do not see any force whatsoever in this objection which is not supported by any law. I reject the objection and hold the nomination valid.”

It appears from this Exhibit 18 that the Petitioner did object to the nomination of the Respondent but it was confined only to one ground, that is, of the Respondent still continuing as a Member of the Rajya Sabha. The grounds that he has stated in his petition and the other grounds which I have indicated in my discussions above were conspicuous by their absence. No evidence has been led by the Petitioner that any other ground was taken before the Returning Officer. Accordingly, I hold that no objection was raised to the nomination of the Respondent on the ground alleged in the petition.

There does not appear to be a bar or any kind of estoppel against the Petitioner's right to question the nomination of the Respondent in an election petition, but, in that case, the burden shifts upon him to prove that by non-compliance with any rule or order under the Representation of the People Act, or with the provisions of the Constitution, the result of the election, in so far as it concerned the returned candidate, has been materially affected [See section 100, sub-section (1), clause (d) of the Representation of the People Act, 1951]. There has been change regarding this law, as it stood without the modification in the year 1956. The Tribunal cannot now declare the election of the returned candidate to be void when there has been a mere non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, unless the result of the election concerning the returned candidate has been materially affected. The Tribunal, subject to the provisions of sub-section (2) can declare the election of the returned candidate to be void, if any nomination has been improperly rejected [Section 100, sub-section (1), clause (c) of the Representation of the People Act]. I am, however, not concerned with clause (c) of sub-section (1) of section 100, as it stands after modification. The burden will now be entirely on the petitioner to prove that the result of the election has been materially affected. This, the Petitioner has signally failed to establish, and there is nothing on the record to show how the result of the election concerning the Respondent has been materially affected by rejection of the objection advanced by the Petitioner at the time of scrutiny under section 36 of the Representation of the People Act, 1951, an objection which has now been dropped altogether. It has also not been established how the transposition of the name of the Respondent in Part C and the Respondent's filling the nomination on the strength of this entry in Part C have materially affected the result of his election. It may be pointed out in this connection that the Petitioner failed to place before the Returning Officer any objection in the nature of a disqualification as mentioned in section 16 of the Representation of the People Act of 1950. In that circumstance an entry in the electoral roll for the time being in force of the constituency shall be conclusive evidence of the fact

that the person referred to in that entry is an elector for that constituency as provided for in section 35, sub-section (7) of the Representation of the People Act, 1951. It follows, therefore, that the entry in the electoral roll has become conclusive and the Respondent had, therefore, the electoral right under section 79, clause (d) to stand for the election. Further more the Petitioner failed to place any material before the Returning Officer showing that the Respondent was disqualified for being chosen as a member of the House of Parliament under section 102 of the Constitution. Accordingly, I decide this issue in this manner that no objection was raised to the nomination of the Respondent on the ground alleged in the petition, and, although there is no bar to the Petitioner's raising the objection now, he cannot succeed in setting aside the election, unless he proves that the result of the election concerning the Respondent has been materially affected.

At this stage I shall take up the objections of Shri Mazdoor one by one. His contention is that by exercising his franchise for the Assembly seat on electoral roll No. 2409, the nomination paper of the Respondent became void and illegal. This argument has no merit on the finding that the Respondent was an elector and his name had been registered at one part of the electoral roll which had become conclusive. The right of an elector is in a different sphere from what he does afterwards on the basis of that right. If he votes illegally, that is if he votes twice, both the votes are liable to be declared invalid. Section 62 of the Representation of the People Act of 1951, lays down some of these penalties which arise out of wrong exercise of the franchise. Sub-section (3) of section 62 states that no person shall vote at a general election in more than one constituency of the same class, and if a person votes in more than one such constituency his votes in all such constituencies shall be void. Sub-section (4) of the same section also lays down that no person shall, at any election, vote in the same constituency more than once, notwithstanding that his name may have been registered in the electoral roll for that constituency more than once, and if he does so vote, all his votes in the constituency shall be void. It has not been argued here that the Respondent has cast his vote in more than one constituency of the same class or that he has cast vote in the same constituency more than once. Assuming the contention of the Petitioner, the utmost that can be said is this that the Respondent cast his vote for the Assembly constituency only once on the basis of his entry in the general part of the electoral roll and did not cast his vote at all for the Parliamentary constituency. There is no prohibition in law that even after transposition an elector, present at the polling booth, cannot cast his vote on his original number personally, although he was entitled to exercise his franchise by postal ballot by virtue of his transposition in another Part. As already pointed out, the manner in the exercise of franchise has nothing to do with the question whether a person is possessed of an electoral right and is an elector within the definition of the term in the Representation of the People Act.

The Petitioner has drawn my attention to certain discrepancies in the address and name of the Respondent. In the nomination papers these are mentioned as:

"Shri Lal Bahadur, Part C, Roll No. 1, Address, 16, Queen Victoria Road, New Delhi."

In the electoral rolls the address is given as 209A of the Mutthiganj, area. In the entry in Part C of the Electoral roll, the letter 'A' is dropped and the address is given only as 209, Mutthiganj. Again, in Exhibit 8 (a), the entry in Part C, the name is Lal Bahadur, whereas, in the entry in Exhibit 5(a), it is Lal Bahadur Shastri, and in the nomination papers, in one of them it is mentioned as Shri Lal Bahadur Shastri, and in the rest it is mentioned only Lal Bahadur. So, there are minor discrepancies about the title of Shastri added or not added in Exhibit 8(a) and Exhibit 5(a), respectively. The addresses given in Exhibit 1 series and that given in Exhibit 5(a) do not tally. In Exhibit 8(a), it cannot be said that there is a discrepancy, because at one place the address at Allahabad is given and at another place the postal address is shown as New Delhi. There is the difference of "209" and "209A" in Exhibits 8(a) and 5(a). These discrepancies are of a very trifling character, and do not affect the case in any manner. Section 36, sub-section (4) lays down that the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. In my judgment, none of the minor discrepancies pointed out by the Petitioner, as discussed above, is of substantial character, and I hold that the Respondent's nomination paper cannot be rejected on these trivial discrepancies.

He has argued that the Respondent was not in physical possession of the dwelling house at 209 or 209A of the Mutthiganj area and, therefore, he was not

qualified to be registered in the electoral roll under section 19 and 20 of the Representation of the People Act, 1950. I have already discussed about this subject, and I may only refer to the evidence of the Respondent which has not been rebutted. At page 133, the Respondent has stated that his permanent residence is at Mutthiganj, Allahabad, which bears the number 209. He has said that, ordinarily, he resides at present in Delhi as he is a Minister there but when he comes to Allahabad, he resides in his house at No. 209, Mutthiganj. He has also added that when he is out of service, his ordinary place of residence will be 209, Mutthiganj, Allahabad, and that he has been living there since 1945-1946. He has stated further on oath that the house bearing No. 209, Mutthiganj is and has been in his possession since 1945-46. It was suggested in cross-examination by the Petitioner that he had been sleeping in his railway coach stabled in the Allahabad railway station yard. His reply was that he had no knowledge of the coach of that description and that he had been staying at his Mutthiganj residence. He has also stated that he had been going to the coach off and on in order to avoid visitors and was sleeping at his house in Mutthiganj for the last three nights. A few lines after, he has deposed that the house No. 209, Mutthiganj is a rented house. This contention of the petitioner has, therefore, no force. The Petitioner has referred to an order of mine passed on 7th September, 1957, refusing to summon Shri Jawahar Lal Nehru as a witness in this case on the ground that he was beyond my jurisdiction. I considered in that order the meaning of the word "resides" and held that the residence of a man is the place where he eats, drinks and sleeps, where his family or servants eat, drink and sleep and may include his business abode. That decision has nothing to do with the interpretation of the words "ordinarily resident" in section 20 of the Representation of the People Act, 1950. That decision was given by me on a consideration of section 92 of the Representation of the People Act, 1951, read with Order 16, rule 19 of the Code of Civil Procedure.

It is argued by him further that it was an illegality to have the name of the respondent retained in Part C after he resigned from the Ministership, and that his name should have been struck off from the roll after his resignation. I fail to see any merit in this argument and I have already held that after the final publication of the electoral roll and regard being had to the qualifying date, the Respondent was not required to file an application for a correction and retransfer of his name in the general part.

It has also been urged that a question of limitation has arisen as the declaration of statement of the Respondent was in June 1956. According to the Petitioner, he ought to have made this declaration of statement before the rules came into force and in that case, alone, he can take advantage of the significance of the expression qualifying date. The "qualifying date", according to section 14, clause (b) of the Representation of the People Act, 1950 means the 1st day of March of the year in which the electoral roll was so prepared and revised, as already stated, and rule No. 7 and other rules of the Representation of the People (Preparation of Electoral Rolls), Rules, 1956, became law on their publication in the Gazette of India on the 11th of June, 1956. The declaration of statement in Form 1-B was, therefore, made only a few days after the publication of the Rules but section 7 requires the submission of a statement in Form 1-B before the 1st day of April. It is significant that the year is not given there and, in the circumstances, it cannot be argued that the Respondent has been affected in any way. Rule 7 could not have contemplated the 1st day of April as being the 1st of April, 1956, as no such rule was in existence at that time. Moreover it may be added here that section 19 of the Representation of the People Act, 1950, speaks of a period prior to registration, and, therefore, once the name is registered, the matter is concluded once for all, unless, the Petitioner proves under section 36, sub-section (7) of the Representation of the People Act 1951 that such person was subject to a disqualification as mentioned in section 16 of Representation of the People Act, 1950. I hold, accordingly, that all these grounds pressed by the Petitioner now are without any substance.

Issue Nos. 1 and 2.—I shall take up these two issues together as they are interrelated. It has to be decided under these two issues whether the Petitioner did actually retire from the election and whether any one else presented the form of withdrawal by practising fraud on the petitioner. The Paragraphs in the petition bearing on these two issues are paragraphs 7, 8, 9, 10 and 11. It was stated in these paragraphs that certain political negotiations were going on and the Petitioner had signed a retirement form and kept it in his office. But, as those negotiations failed, the form was not presented. According to the Petitioner, this form was surreptitiously taken away by someone and by false impersonation presented afterwards before the Returning Officer. It was alleged that the

Petitioner remained ignorant of this fraud, but came to know afterwards on the 25th of February, 1957, the first day of poll, that his ballot boxes had not been placed at polling stations, on which he made inquiries and then discovered the fraud. The Petitioner's case in the election petition is that as a result of this fraud, his ballot boxes were not kept at the polling stations and that thereby he was deprived of seeking the verdict of the electorate. His grievance against the Returning Officer in paragraph 8 is that he did not make any inquiry about the identity of the person presenting the form before forwarding the document to the District Election Office. It may be noted here that no details about how the form came to be signed at two places and how it was taken back by the Petitioner and kept in his house, were furnished in his election petition. Again, in all these paragraphs there is no whisper anywhere that he had scored through his signatures as a safeguard against misuse of this form by someone else.

This form (Form No. 12) which is a notice of retirement by a contesting candidate, under section 55A of the Representation of the People Act, 1951, has been marked Exhibit 14 and the two signatures of the Petitioner as Exhibits 14(b) and 14(c) respectively. The order of Shri J. N. Raina (R.W. 15), the Returning Officer has been marked Exhibit 14(a). The order runs as follows:—

“Presented before me personally by Mr. Mubarak Mazdoor. To D. D. for further action.....15/2/1957”.

There can hardly be any doubt that this notice of retirement was actually presented before Shri Raina (R.W. 15). The Petitioner has not challenged his two signatures, Exhibits 14(b) and 14(c), but has explained them in this way. The last date of withdrawal in his constituency was 4th February, 1957, and on that date at 3 P.M., outside the Court of the Returning Officer he was approached by Shri Ramji Dwivedi (P.W. 12), a worker of the Praja Socialist party and one of the Secretaries of the Allahabad City Praja Socialist Party who made a proposal that there should be no fight between Radhey Shyam Pathak, the Praja Socialist Party candidate, and the petitioner, who were both leftist candidates, and the matter should be referred to the panches for decision as to which of these two candidates should retire. P.W. 12, then gave him a blank retirement form and requested the Petitioner to bring it next day duly filled up and signed. P.W. 12 said that after the Petitioner had signed his retirement form and agreed to the proposal regarding the names of the panches and also agreed to abide by their decision, then he (Ramji Dwivedi) would make an official proposal to his party. The Petitioner then asked for a night's time to think over this and next day he brought this retirement form signed at two places putting the date as “15th February, 1957”, although that date was 5th of February, 1957. According to the Petitioner, he had post dated this notice of withdrawal deliberately so that nobody could misuse it. With this form containing his signatures, he met Shri Ramji Dwivedi again at the same place at about 12 P.M. and showed him the retirement form. On inquiry from Ramji Dwivedi why the date was changed he told him that he had taken the precaution so that nobody could misuse it, because this form could not be accepted on 15th February, 1957.

After this Shri Dwivedi suggested three names but the Petitioner did not agree to them. The Petitioner's suggestion of some names was turned down by Shri Dwivedi and the negotiations accordingly failed. It is said that after the break down of these negotiations, the Petitioner returned to his house, penned through the two signatures, appearing on the retirement form (Exhibit 14) and kept it somewhere in his *baithak khana*. On the 8th February 1957, he left for Calcutta as, being confident of his success in Allahabad, he did not think his personal presence at this place necessary. According to him, his canvassing in Allahabad continued till 26th or 27th of February, 1957, but on the date of poll, 25th of February, 1957, it was discovered that his ballot boxes had not been sent to the proper places. At page 121, the Petitioner has stated that when he was away from Allahabad, this retirement form (Exhibit 14) was perhaps taken away by some person and delivered to the Returning Officer against his consent. It is his definite case that he could not, possibly, deliver that form (Exhibit 14) to the Returning Officer as on that very particular date he was in Calcutta.

It has to be determined, therefore, whether the Petitioner was in Allahabad on the 15th February, 1957, and had presented this notice of withdrawal (Exhibit 14) before the Returning Officer, Shri J. N. Raina (R.W. 15). Shri Raina, has stated on oath the form (Exhibit 14) was presented before him on the 15th February, 1957, at about 1 P.M. in the office room of his house by Shri Mubarak Mazdoor, the Petitioner, personally. He has proved this form as well as the two signatures of the Petitioner and the order passed by him on that notice. He has

said that after passing the orders, he handed over the retirement form to Shri Mubarak Mazdoor, himself, for taking it to the District Election Officer. It is not denied that this Exhibit 14 was kept in the District Election Office. According to the Petitioner, he discovered this form at the time of inspection in the month of April, 1957. R.W. 15 has given cogent reasons for being in a position to say that it was the Petitioner and no one else who had presented this exhibit before him on the 15th of February. He has said that the Petitioner was present before him on the date of nomination and again on the date of scrutiny and he saw him on both these two occasions. He repudiated the suggestion made by the Petitioner in cross-examination that some member of his family is in the Congress party or that he is related to any Minister of the Central Cabinet. He has also denied about his wife being a member of the Congress Party. The witness has also said that when he scrutinised the retirement form (Exhibit 14), he found that there was no mark of scoring of the two signatures, viz., Exhibits 14(b) and 14(c). He is sure that the two lines crossing the letter "zd" in the two signatures of Shri Mubarak Mazdoor did not exist when Exhibit 14 was presented before him because, in that case, he would not have accepted any scored out signatures. He has stated in cross-examination that he handed over this document to the Petitioner as he trusted him, and that from the endorsement on Exhibit 14, it appeared this form was duly delivered at the election office as there was a note dated 16th February, 1957, that copies of this retirement form were affixed on the notice board and sent to other contesting candidates. The witness is also sure about the authenticity of the signatures of the Petitioner as he says that he had seen him signing on the date of filing the nomination papers. It was suggested in the cross-examination that the marks of scoring were not detected by him when Exhibit 14 was presented and that he had deliberately accepted this form with a view to help the Congress candidate. This suggestion was stoutly denied and I see nothing from his evidence from which it can be inferred that he was inclined to favour any candidate. He has also stated that he committed no mistake about the identity of the man who presented this form and it was not true that he wanted to oblige the Congress Party.

I have no hesitation in believing this witness as he is a person in high position saddled with heavy responsibility, discharging important functions of the Government and there is nothing in the evidence to show that he was out to favour the Respondent or the Congress and, thereby, harm the Petitioner. He could have hardly helped the Congress on 15th of February, 1957, when there were two other powerful candidates in the field to give a stiff opposition to the Respondent. Moreover, in the ordinary course, if any form of notice for retirement was to be filed he alone was the competent Officer to receive it. Again, his statement is corroborated in material particulars from independent sources. The Respondent has adduced evidence to prove that to several persons the Petitioner had admitted about this retirement, which, if true, would strongly corroborate the presentation of the notice of withdrawal (Exhibit 14) by the Petitioner, himself. These witnesses are Mirza Musharraf Ali (R.W. 4), Mirza Shaukat Husain (R.W. 7), and Syed Nurul Hasan (R.W. 16). R.W. 4 is a seller of perfumes, and he has said that one day at about 5 or 5-30 p.m., about a year from the date of his deposition, 8th of February, 1958, he was in his shop and at this shop was also present Mirza Shaukat Husain (R.W. 7), a retired jailor. The Petitioner came to his shop and the usual greetings were exchanged. The Petitioner then wanted some itr to be given and in the course of conversation, this witness asked him as to why no canvassing was being done on his behalf. The Petitioner replied, "Ham baith gaye hain". On being again asked, what was the reason for his withdrawing from the contest, he replied that he was having some talks with the Congress and soon there would be some decision. The Petitioner has not been able to break the evidence of this witness in any way. It was suggested to him that he was a registered Goonda, that he was a police surveillee, that the police had challenged him on several occasions and had also brought cases against him. All these were denied and there is no evidence to show that this shop-keeper (R.W. 4), is a man of evil character. The witness has also said that he had never been a member of the Congress and that he had not put in any application for a loan from the Government. On his being further cross-examined, the witness said that once only he had deposed in an election case, but that was against the Congress 8 or 9 years ago. He has also given the reason why the Petitioner would tell him about his withdrawal, as he and the Petitioner belong to the same mohalla and know each other well and both of them played together in their boyhood days. The witness has stated that he was not a voter in the last election and that in case he was a voter and if the Petitioner had

asked him for his vote, he would have certainly cast his vote for him. He has also said that he does not know the Respondent. He denied having heard the name of Rai Amar Nath, who is, admittedly, taking steps in this case on behalf of the Respondent. I find nothing in his evidence, therefore, to reject his testimony.

R.W. 7, Mirza Shaukat Husain has supported R.W. 4 in all these details. He is a Government pensioner who held the post of a jailor once and had retired in July 1956. He has stated that he has no concern with either the Respondent or Shri Rai Amar Nath. There is nothing in his evidence to show why he would depose falsely against the Petitioner and why he would help the Respondent in the election contest.

The last witness on this point is R.W. 16, Syed Nurul Hasan. This witness is certainly a very respectable one. He is an aged man of 65 years practising in Allahabad for the last 41 years. He was the District Government Counsel for 8 years. In examination-in-chief he did not speak about the admission of retirement by the Petitioner. This was brought out by the Petitioner during cross-examination. He said,

"I did meet you under the Grand Hotel Arcade in Calcutta but it was either in the beginning of March or at the end of February. I had talk with you. I had asked you why you were in Calcutta when you should have been busy in Allahabad in connection with your election and you replied that you had withdrawn from the contest".

He denied that the Congress Government had appointed him as the District Government Counsel and said that he was in this post since the British days. A wild suggestion was made to him that he had become insane at one time, which suggestion was denied. On the suggestion put to him that he had acquired land on Drummond road by exploiting his position as a Member of the Allahabad Municipal Board, he replied that he never acquired such land. He followed this up by saying that he did not take or acquire an inch of land when he was a member of the Municipal Board. It was then suggested to him that because the Petitioner turned down his request to send some money to Pakistan, he was deposing against him. This suggestion was also denied and there is not a jot of evidence anywhere to prove that such request had been made. Assuming that such a request had been made and the Petitioner did not accede to it, the matter is extremely unimportant as the witness could send his money to Pakistan through various persons or through the usual channel and that could have been no reason for him to figure as a witness against him. I consider the evidence of these three witnesses as being true and reliable, which strongly supports the fact of presentation of Exhibit 14 before the Returning Officer (R.W. 15) on the 15th of February, 1957.

Again, there are other circumstances to indicate that after the scrutiny stage, the Petitioner ceased to take any interest in his election. Admittedly, he went away from the field of contest at a crucial time, that is 8th of February, 1957. I have already said that 25th of February and 12th of March, 1957, were dates for poll in this constituency, and a candidate was expected to be up and doing during the course of a month or a month and a half prior to the dates of election and, in the normal course, it was not expected that a serious candidate would go away from the place where he had stood for seeking election. The Petitioner has said that he went away to Calcutta in order to help the candidate against Dr. Bidhan Chandra Roy. There is no evidence to support the story that the Petitioner was busy in helping the candidate opposing Dr. Bidhan Chandra Roy. It is too much to believe that a candidate would make himself busy in some one else's election contest, leaving his constituency and remain absent therefrom even till the dates of voting. It is admitted by the Petitioner that there was no manifesto issued by him, no posters were printed or circulated and no leaflets were distributed on his behalf. According to him, he left the constituency because he was sure of his success as he had already prepared his ground by canvassing from door to door and by writing with either chalk or charcoal on the walls in his constituency. It is significant that none of the workers, who went from door to door, has been examined in this case. The Petitioner has stated in cross-examination that, while in Calcutta, he read in some Allahabad newspapers that his boxes had not been placed on the polling booths and he sent his driver, Badri Singh, to Allahabad, to ascertain what the matter was. This messenger, who was Badri Singh, came to Allahabad and returned from this place with a message from Shri Janeshwar Misra and others who had been left in charge of the election campaign in Allahabad during the absence of the Petitioner. Neither Janeshwar Misra nor Badri Singh has been examined in the case. The Petitioner has

stated in his examination-in-chief that he had canvassed so much by December 1956, that he required no further canvassing and propaganda and he had a support of about 128000 voters. At the same time he admitted that he did not purchase a copy of the electoral roll and had no copy of the same before him. This assumption on his part, therefore, that he had solid support of 128000 votes was nothing but an empty boastful assertion without any foundation. It would be straining one's common sense and experience to believe the Petitioner that although he had so many votes at this command which could not be broken by any candidate of any party (Page 131) of the evidence yet he was eager to join in a negotiation with the Praja Socialist Party and place his success in jeopardy by putting it in the hands of the panches.

Shri Raina's statement about the filling of the notice of withdrawal by the petitioner himself can again be tested by some characteristics appearing in Exhibit 14. Shri Raina was confident that when Exhibit 14 was presented before him by Shri Mubarak Mazdoor his two signatures did not bear any mark of scoring through. It is the positive case of the Petitioner that he scored through or penned through his two signatures after the breakdown of the negotiations with Shri Ram Ji Dwivedi (P.W. 12). According to him this amounted to virtual destruction of the document which, possibly, could not be used against him by any interested party. If the signatures were scored through after the negotiations failed, I do not find any reason why the pen was not taken over the entire signatures, but it was taken over only two letters, namely, "z and d" of both the signatures and that also either with a very light ink or with a light ink-pencil, if the same was used. If the Petitioner's version is to be given any credit, then one would expect scoring through or penning through of both the signatures from the beginning to the end, horizontally, or, in a zigzag manner running over all the letters, this is not so. It is significant to remember in this connection that the Petitioner did not mention about the scoring through of these two signatures in his election Petition and ascribed the omission to his lawyer who had drafted it. In his cross-examination he had admitted that he did not mention the fact of his penning through his signatures in his petition and when questioned about it, he has replied that he pened it through on 5th of February, 1957, and the details had slipped out of his mind at the time when his Counsel drafted the petition. He then said that the Petition was drafted by his Counsel when he was not present. I have already stated that the record lying in the District Election Office was inspected by the Petitioner. The application was made on the 9th April, 1957, and the record was inspected on 11th of April, 1957. From the peculiarities in making these slightmarks over the letters "Z" and "D" in the word "Mazdoor", and after closely examining all the circumstances, I feel that these two marks cutting the letters "z" and "d" in the word "Mazdoor" were made either by the Petitioner or by some one interested in him at the time of the inspection of the record. It is true that the inspection was made most probably in the presence of the District Election Officer and some clerks of the office but it was very easy for any person to make these marks without detection. It was not at all difficult to put such marks at such opportune moment when the Officer and the clerk were probably busy in their work little anticipating such an action on the part of a candidate or by some one else on his behalf. Again, the marks are such as would afford a ready excuse for the person making it, if detected. He would, only in that case say that the marks had been made inadvertently while just flourishing his pen or ink pencil above the signatures and actually the signatures had not been penned through. The names of the persons, who inspected the file will be found in Exhibits L-IV and L-V. The application for the inspection is Exhibit L, which shows that it was filed on 9th April, 1957. The witnesses who support the Petitioner regarding the negotiations are P. Ws. 12, 13, and 16. P. W. 12 is Shri Ram Ji Dwivedi about whom I have already referred. He is a worker for the Praja Socialist Party as well as a secretary of that organisation. He is a person having no earning of his own. P.W. 13 admits that he too is a secretary of the Praja Socialist Party. He was also the secretary of the Allahabad University Students Union. I will presently show, while examining his veracity on other points, that he is totally untrustworthy. P. W. 16 is also a secretary of the Allahabad District Praja Socialist Party. It is apparent, therefore, that no independent witness has been examined. All the three witnesses, named above, are interested inasmuch as in the case of success of this election petition, this party will have another chance to fight out the election contest in this Parliamentary Constituency. Furthermore, there are certain inherent improbabilities in the story about how this notice of withdrawal came to be signed by the Petitioner. It is difficult to understand why the Petitioner, alone, would sign a retirement; from when negotiation was going on which concerned the other candidate.

Radhey Shyam Pathak as well. The negotiations was such which did not contemplate of filing of notice of withdrawal form. It was not a term of the negotiations, and it is difficult to understand how the Petitioner would anticipate that he would have to retire, and, therefore, he alone should fill up that form on the request of P.W. 12. Indeed, there was no necessity of signing any kind of form whatsoever before the panches constituted themselves to arbitrate in the matter and gave their decision, as to who would withdraw. The whole story is so much against ordinary human conduct that it is difficult to place any reliance on it.

Again, assuming for a moment that the Petitioner wanted to oblige P.W. 12 even before the panches were duly nominated, there is no reasonable explanation why the form was not destroyed or torn immediately, or sometimes after, the failure of the negotiations. There was no occasion for drawing a few faint lines on two of the letters of the word "Mazdoor" and preserve that paper unnecessarily. I cannot believe for a moment, as explained by the Petitioner, that he wanted to preserve it to prove his *bona fides* afterwards.

There is also no reasonable explanation why he did not complain immediately after having discovered the fraud. An ordinary person, in the ordinary course of human affairs, would have immediately drawn the attention of the District Election Officer or other authorities that this important papers had been stolen from his house and had been used against him. Moreover, I can hardly believe a stranger, impersonating himself as the Petitioner, and presenting Exhibit 14 before the Returning Officer, who had seen the Petitioner twice, had rejected his objections against the nomination of the Respondent and had reasons to remember the appearance of the Petitioner as that cannot be said to be of the ordinary type, which register no impression on a person seeing him. The Petitioner has an individuality of his own and it is difficult for any one to forget his features and appearance after having seen him several times and after having had occasions to deal with him. A person in his position would have raised a hue and cry after the detection of the alleged fraud and would not have waited to file an election petition on the advice of his lawyers as told by him in cross-examination. It was too much humiliating for the Petitioner to sign a notice of withdrawal form even before the names of the panches were settled. There is also no valid explanation why he would put the date as 15th February, 1957, when the date was 5th February, 1957. When questioned at page 129 of the evidence why he put this wrong date which he knew would make the retirement form invalid, his reply was that it was not a foul play to put a different date. When asked again whether he realised at that time that he was practising fraud on Ramji by putting the date as 15th February, 1957, he replied that he was not practising any fraud. Again, when told that giving an invalid retirement form to a friend who did not know the invalidity of the same in the course of negotiations, did he think it a justified practice, his reply was as follows,

"It was completely fair, because in love and war everything is fair and I had taken only the precaution because this form was not going to be handed over to the Returning Officer".

Again, when asked at page 131 why he did not tear up the retirement form when the negotiations had failed, he said that he had kept it with a view to destroy it but on account of many matters which were in his head then, he forgot. He said that he went to Calcutta in this state of forgetfulness and then at the same time made a statement to this effect that he had no time to tear off the form as if the tearing up of the form would have taken a few hours. Taking these circumstances into consideration along with others, discussed already, I feel no hesitation in rejecting the explanation rendered by the Petitioner about how Exhibit 14 came to be in the records of the District Election Office with the two faint marks on a part of his signatures.

The Petitioner has examined P.Ws. 7, 18 and 22 to prove that he was in Calcutta on the 15th of February, 1957. P.W. 7 states about meeting the Petitioner in Calcutta on that date. He is son-in-law of Sri Salik Ram Jaiswal who was a Praja Socialist Party candidate from Meja constituency. According to this witness, he had sold some goods to one Sheo Dani Shah for which he was not making full payment and he approached the Petitioner so that Sheo Dani Shah made the payment to him. Sheo Dani Shah has not been examined nor, has any document been produced to show the indebtedness of this man. There is also no evidence to show what influence the Petitioner had on this Sheo Dani Shah to make him pay to this witness. The next witness is P.W. 18, who is a full brother

of the Petitioner. According to him he went to Calcutta to meet his brother and persuade him to retire from the election contest. He is a totally interested person and his evidence can hardly be preferred as against that of the Returning Officer. The last witness is P.W. 22, Shri Nirpendra Nath Banerji. He has stated that he was a tuberculosis patient and was in Kauchapara T.B. Hospital for 8 or 9 months from 7th of December 1956 to 11th September 1957. On the 15th of February, 1957, which was his birthday, he had invited some friends to come to the Hospital, and the Petitioner and his brother did see him on that date at 4-30 p.m. I am unable to believe this particular friend of the Petitioner. He has admitted that the Petitioner did not receive any invitation letter from him, but that is not very important, if indeed he had written to his brother to bring the Petitioner, along with him to attend the birthday celebration. This letter to the brother has not been produced. The importance of this letter could not have escaped the Petitioner. After the alleged detection of fraud on 11th April, 1957, when, according to him, he inspected the record and found Exhibit 14 there. In the ordinary course he would have made an attempt to preserve this invitation letter written by this witness to his brother to prove that he was in Calcutta on that date. The witness has stated that in the month of January he had met the petitioner's brother and was told that the Petitioner was expected to be in Calcutta. He confirmed this by writing a letter to him afterwards, and then he wrote back to bring the Petitioner to the Hospital. The letter written to the witness by the brother of the Petitioner has also not been produced and the witness has said that he destroyed all his letters at the time of leaving the Hospital which was 11th of September, 1957, long after the alleged detection of fraud on 11th April, 1957. If ever there was any such letter the Petitioner would not have left any stone unturned to get it and to preserve it to prove his absence from Allahabad on the 15th of February, 1957. The witness admits that he is a matriculate and that in the Matriculation Certificate his date of birth has been written, yet, strangely enough this excellent piece of evidence has not been produced before me. Nor, has the horoscope of this witness been produced to indicate that 15th of February was the birth date of this witness. Accordingly, I disbelieve these witnesses and reject the version of the Petitioner that he was in Calcutta on the 15th of February, 1957.

Two telegrams have been exhibited on behalf of the Petitioner which are exhibits 23 and 23(a). One was of the 11th of February and the other of the 12th of February. In Exhibit 23, the witness was asking his brother to withdraw and in the next telegram was asking him to send express withdrawal authority letters to the proposer and to confirm the name by telegram. These two telegrams were sent to one Jagpal Sharma, 27, Brabourn Road, Calcutta. I do not understand why the telegrams were not sent to the Petitioner by the Petitioner's address and by the Petitioner's name. According to this witness, on receiving no reply of his telegrams, he started for Calcutta which he reached on the 13th morning. I do not know how he expected a reply to his telegram of the 12th within a few hours when, admittedly, the Petitioner had no permanent address of his own in Calcutta, and the witness had to depend upon another person to hand it over to his brother. The witness had deposed about sending these two telegrams after some conference with the Respondent regarding a proposal said to have been made by him (Respondent) to put the Petitioner in the Rajya Sabha. This negotiation or, rather the temptation offered to the Petitioner in the shape of a seat in the Rajya Sabha, has been denied by the Respondent, and another witness Shri Jagdish Kudesia, R.W. 19, who is said to have broached about this matter to this witness and taken the Petitioner to the Respondent's house. The whole story about this temptation appears to me to be a myth and I do not believe for a moment that the Respondent would offer him such a temptation in order to pave his way for his successful election. Even if the Petitioner went out of the field of contest, there were two other strong candidates still left and one of them was a candidate for the Praja Socialist Party. The Respondent could hardly count his success in the election by the absence of the Petitioner, alone, from the field. The Petitioner was a candidate who was practically taking no interest in his election, as already stated. He had no party to back him and I fail to understand how the Respondent would take him as such an important candidate whose very presence in the field was likely to affect the success in his election. The statement of the Petitioner that he had a solid support of 1,28,000 votes from the three major communities is merely a boast without any title of substance. If a person was so certain of his success, he would neither be a party in the negotiations with P.W. 12, nor think of meeting any party to parley on the question of his withdrawal or retirement. I think there is some substance in the suggestion made on behalf of the Respondent to the Petitioner that the retirement form (Exhibit 14) was filed by

the Petitioner after negotiations with the Praja Socialist Party had matured. The two telegrams, Exhibits 23 and 23(a) do not prove of any negotiation between P.W. 18 and the Respondent or any previous negotiation between the Petitioner and the Respondent. It is possible that at that time negotiation with Praja Socialist Party was going on which afterwards matured in the filing of the retirement form. It is equally possible that the brother of the Petitioner did not want to see him wasting time and money in contesting an election in which he had no expectation of any success. Considering these circumstances. I hold that the Petitioner did retire from the Election and that it was he who had presented the notice of withdrawal (Exhibit 14) before the Returning Officer. I further hold that no one impersonated him before the Returning Officer or practised fraud on the Petitioner by removing Exhibit 14 from his house and then presenting it before the Returning Officer.

In arriving at these and other findings I do not take into consideration the various assertions of the Petitioner regarding his academic merits and public deeds, some of which in cross-examination, have been very much discredited. I also do not take into consideration his claim to enormous riches derived from various concerns in India and abroad, which, too, have been damaged beyond redemption under stress of a searching and able cross-examination by Shri A. K. Misra counsel for the respondent. At one place he has said that he had business concerns at Calcutta, Karachi, Kochin, Indore, Rangoon, Bangkok, Singapur and other places. He had to admit, however, that he was not a proprietor of these firms. He said that these concerns belonged to his family members, meaning his brothers, his sisters, his wife, his cousins and other relations. He could not say how much income-tax was paid by any member of the family who were proprietors of these concerns. He even could not say if they ever paid any income-tax at all. He deposed that his wife was not a proprietor but a partner in these concerns but could not say how much income-tax was paid by her. When asked if he could produce the partnership deeds which were written on behalf of his wife regarding these concerns, his reply was, "I cannot say". He admitted that in the Firm at Karachi, he was a partner to the extent of six annas and lost a sum of rupees twenty lacs on account of an action of the Pakistan Government, yet he could not say what was the income tax assessed on this Firm and conceded that he was not assessed on individual income. He also admitted, having seen the account and the balance-sheet, and yet he was not in a position to give any idea of income-tax paid by any of the concerns in which, according to him, he was interested. After some time, he deposed as follows:—

"At present I do not pay any income-tax. I have never been assessed on my individual income. I was not a partner or proprietor in any of the concerns in India or outside".

It is strange that although he claimed to be such a big business man, he was never assessed on his individual income and had never paid a single pie as income-tax in his life. His further statements in cross-examination have no meaning at all. At one place he said as follows:—

"I had no share in the Thailand Co. but I had interest in it. As regards shares, I had no share in my own name in any of the concerns, but my family member had. I was a trustee of the shares and interests of my family members. There was no trust deed executed about this trust."

He said that he did not derive any gain from the profits of the Company but whenever he required any amount of money he drew from it on behalf of his family members as well as for himself as remuneration for his work. A little after, when questioned how much remuneration he received from certain companies, he replied that he did not remember. At last, he said that his remuneration was only Re. 1/- per month plus all found. This was for looking after the entire business. He could not remember if he received remuneration from the Indore Co. He also could not remember what was his remuneration from the concern at Singapur. He did not maintain any account of the remunerations received and kept no bank account. He admitted that as a trustee for his relations, he looked into the accounts of the concerns and was attending all the business from 10 a.m. to 5 p.m. He said that the companies paid him travelling expenses but could not remember how much money he received on that account. He, again, could not remember how much money he received on that account, concerns (Page 152), and admitted that he could not produce any record of formation of these concerns as he was neither the proprietor, nor a partner nor a shareholder on paper of any of these concerns.

His claim of proprietorship over certain valuable lands and houses is equally flimsy. He says he has houses in Allahabad and in Meerut but admits that they are not in his name, he has also lands in Chandranagore which are building sites, but although his father died in the year 1941, till now, he did not get his name mutated in his place. About lands in Bombay Presidency, he admits that they are not in his name. According to him, they are in the names of his mother, and his maternal uncles. He, however, was not in a position to give plot number of these lands nor could he say how much tax of rent was being paid for them. Immediately after he has deposed that nobody has got any share in the land in Bombay Presidency and that he is its sole owner, but, he said that it had not been mutated in his name as yet. He also could not say in whose names the lands in Bombay had been recorded. He also could not remember the area and was not in a position to give their boundaries. He has admitted that the house in Allahabad was in the name of his mother but he does not know how much house or water tax is being paid for them. It appears from his evidence that since 12th of July, 1955, he is neither in business nor in service. He said that he had no income during the last two years, and has never paid any income-tax. He again, admitted that he does not maintain any account in Bank. He has, at the same time, 12 dependents to maintain. From all these materials, it is clear to me that the Petitioner has rather given an imaginary baseless account of his business life in the past, and that at present he has hardly any income and is burdened with a large number of dependents. I have, however, nothing to do with his alleged riches or a turn of fortune. This petition has to be decided without any consideration of the wealth or poverty of the Petitioner. It has to be decided on its own merits and I have to find out whether the charges levelled by the Petitioner against the Respondent have been proved and the points of law urged by the Petitioner are such as would render the election void.

Again, I do not want to take into consideration the result of a criminal case brought by the Petitioner in Calcutta against one Sri N. D. Agarwal, Shri M. H. Khosla (R.W. 25) and others. This witness (R.W. 25) has deposed that a criminal case had been brought against him and others by the Petitioner in Calcutta, but was withdrawn after the complainant had tendered apologies to the accused and filed an application for withdrawal (Exhibit J), the last paragraph of which runs as follows,

"That the complainant has expressed his regrets to all the accused persons and they have accepted the same and all the accused persons have assured the complainant that they will not make any claim for malicious prosecution or defamation or damages whatsoever either of civil or criminal nature against the complainant arising out of this case under sections 448/341/403/34, Indian Penal Code, and the subject matter and proceedings of this particular case and the complainant records his great sense of appreciation and obligation to Shri N. D. Agarwala for his kindness."

He was asked about the letters of apology to the different accused persons in that criminal case and also about the withdrawal petition. His explanation was that he had signed blank pieces of paper and did not know the contents of those documents. About the signatures he said that they resembled his and took shelter behind a forgetful memory about the compromise arrived at which afterwards terminated in filing an application for withdrawal of the criminal case. He went so far as to say that he signed those papers by the persuasion of Shri Kidwai and many multi-millionaires of Calcutta. He volunteered in his statement as follows,

"I was made to understand and believe by Shri Kidwai and many other multi-millionaires of Calcutta that I must sign any paper which Nar Singh Babu wanted to be signed to satisfy his ego, as he called himself a partner of Dr. Bidhan Chandra Roy."

Nar Singh Babu is Shri N. D. Agarwala. He said that he got Rs. 10,000/- or more from the accused men, but had to admit that he did not deposit this sum in any bank. In cross examination of Shri Khosla (R.W. 25) it was suggested to him by the Petitioner that it was settled at that time that the document drawn between him and Shri N. D. Agarwala would not be shown in any court for any purpose other than a criminal case. To this suggestion the answer of the witness (R.W. 25), was,

"I do not know of any such answer (sic) in my case, because you had tendered a clean apology and I have every right to display in court and to prove your low integrity".

This evidence has been brought on the record on behalf of the Respondent in order to damage the character of the Petitioner and to expose him to the criticism that he is an unscrupulous person whose evidence therefore, should not be believed. It would be better, however, if I steer away from this damaging evidence about the character of the Petitioner and ignore the matter altogether. This episode in his life has nothing to do either with the Respondent or with this election petition and it would be better, therefore, if it is altogether left out of consideration, to determine the truth or otherwise of the charges levelled against the Respondent.

But, I cannot very well ignore the two telegrams which had been sent by the Petitioner, Exhibits K and K-1. These two telegrams were despatched by the Petitioner on 12th April, 1957. Shri Aftab Ali Khan (R.W. 24), a signaller in the City Post Office, Allahabad, has deposed about these two telegrams. He has said that the Petitioner, himself, presented these two telegrams before him. There is no question about the identity of the sender of the telegrams as the witness stated in cross-examination that he had seen the Petitioner going by the road and he had personally handed over the telegrams to him. It appears further from his evidence that the Petitioner had some talk with this witness about the charges of the telegrams and the Petitioner was twice before this witness, once to know the value of the stamps and next when the telegrams were produced with the stamps affixed on them. It may be that the Respondent is the Minister for Post and Telegraph but that is no reason why the witness would depose against the Petitioner. These two original telegrams, Exhibits K and K-1, have been produced by Shri K. C. Sethi (R.W. 12). He was asked by the Director General of Posts and Telegraphs to produce these two telegrams before this Tribunal. Exhibit K is a telegram sent to the Respondent and its wordings are as follows:—

“Want seat Rajya Sabha your vacancy request your support please reply.
Mubarak Mazdoor 5, Dara Shah Ajmal”

It has been signed by the Petitioner. The other telegram, Exhibit K-1 is in the following words,

“Jawahar Lal Nehru Esq. New Delhi want interview Delhi before the twenty second regarding my candidature Rajya Sabha from Uttar Pradesh and election petition against Lal Bahadur please write reply
Mubarak Mazdoor 5, Dara Shah Ajmal”

This telegram has also been signed by the Petitioner. When cross-examined as to whether he sought an interview with Shri Jawahar Lal Nehru, he said that he did not remember. He afterwards said that he did not remember if he sent a telegram to Shri Jawahar Lal Nehru asking for an interview. It appears that the cross-examiner made some mistake with respect to the date of sending these two telegrams and asked the Petitioner about sending the telegrams on the 12th July, 1957 and not on 12th April, 1957. The petitioner, however, was not misled by that wrong reference, as when the contents were read over from a copy of the same, the Petitioner admitted to have sent such a telegram to Shri Jawahar Lal Nehru, but said that he did not remember the contents of the same and the date. It has been suggested on behalf of the Respondent that these two telegrams go to prove that the Petitioner was putting a pressure on the Prime Minister and on the Respondent to give him a seat in the Rajya Sabha which practically amounted to blackmailing and that the motive for bringing this election petition was to force the Respondent and others to give the Petitioner a seat in the Rajya Sabha. It is true the mention about the election petition against Shri Lal Bahadur in the telegram to Shri Jawahar Lal Nehru is very significant and the explanation of the Petitioner on this matter appears to be wholly devoid of any substance. When he was asked about the purpose of his mentioning in the telegram the election petition against Shri Lal Bahadur, his reply was as follows:—

“Because my personal relation with Shri Jawahar Lal Nehru are very dear. I wanted that there should be no misunderstanding in my personal relations with Shri Jawahar Lal Nehru on account of this petition against Lal Bahadur as he was one of the Cabinet Ministers and as my petition was going to affect the Cabinet position. I was intending to contest for a seat in the Rajya Sabha. I did not want to be nominated of the Rajya Sabha. It is a lie to say that I was giving a bluff to Shri Jawahar Lal Nehru when I wrote out this telegram. I intended to contest for a seat in the Rajya Sabha after the general election.”

He never contested for a seat in the Rajya Sabha and it is strange that being opposed to Congress ideology and all the time stating again and again that his aim and purpose of life was to defect the Congress, he would ask Shri Jawahar Lal Nehru and Shri Lal Bahadur, who very much belong to the Congress organisation, for a seat in the Rajya Sabha in the vacancy created by the Respondent. Even when confronted with the two telegrams, the Petitioner boasted that he did not want a Congress ticket from Shri Jawahar Lal Nehru and it was not a fact that Shri Jawahar Lal Nehru could use his influence only for a Congress ticket. Again, he has said that Shri Nehru's assistance could have had for getting votes for his independent candidature and that Shri Nehru had gone many a time against the tenets of his party. In this connection, I may refer to an admission made by the Petitioner in his cross-examination at page 180 and 181 of his deposition. He stated as follows:—

“I had a discussion about a seat in the Rajya Sabha with Shri Lal Bahadur, but, that was much before the election. I had talked to him about this matter because, perhaps he was in the Central Parliamentary Board of the Congress and the support of the Congress votes to the independent candidate could not be had without the previous sanction of the Parliamentary Board.”

From this admission it is clear that the explanation of the Petitioner about sending the two telegrams was absolutely without any foundation, and I have no hesitation in rejecting the same.

I may mention a few dates here to bring out the real significance of these two telegrams, Exhibits K and K-1. Sometimes, before the elections, as pointed out just now, the Petitioner wanted the assistance of the Respondent to get into the Rajya Sabha. On 4th February, 1957 the Petitioner meets Dwivedi (P.W. 12) and there was a talk of either the Petitioner or the Praja Socialist Party candidate retiring from the contest in order to present united front of the leftist parties against the Congress. Two telegrams were sent by Sardar Ahsan (P.W. 18) brother of the Petitioner, one on the 11th of February, 1957 and the other on the 12th February, 1957, asking the Petitioner first to withdraw from the contest and then to send a letter of withdrawal authority. On the 15th of February, 1957, the notice of retirement is filed before the Returning Officer. The Petitioner returns to Allahabad sometimes in April 1957, and makes an application for inspection of records on 9th of April, 1957. The records were inspected on the 11th April, 1957 and the Petitioner sends the two telegrams, one to the Respondent and the other to Shri Jawahar Lal Nehru on 12th April, 1957. I suspect and that on solid materials, that the application for inspection of the record was nothing but a device to, somehow, render Exhibit 14 defective and invalid, for the success of a proposed election petition, as, otherwise, the Petitioner had not the remotest chance with an untampered notice of withdrawal. To my mind, it appears that the Petitioner had an eye on a seat in the Rajya Sabha from a long time. It was for this that he had filed his nomination paper and was a lukewarm in his election campaign. He was asked by his brother to retire either for want of funds to carry on the campaign or to please the Praja Socialist Party who, in case of success, might have showered some advantage to the Petitioner, and, probably, helped him to get a seat in the Rajya Sabha. When that failed and the Congress came to power, the Petitioner made a last bid by a threat to file an election petition, after having succeeded in making some marks on parts of his signatures on Exhibit 14 which would give him a ground to bolster up a story of scoring through his signatures after negotiations had failed with a particular party. The two telegrams, Exhibits K and K-1, also go to demolish the exaggerated statements of the Petitioner regarding the absurdity of the idea of retirement after filing his nomination paper. At page 120, he has said that the idea of withdrawal of retirement after filing his nomination paper was nauseating and dishonourable for a man of his political past. Further on he has deposed as follows,

“On 13th of February 1957 my brother, Sardar Ahsan, came to Calcutta and met me. He persuaded me to retire but I told him that I did not want to commit a political suicide. I was told by him that in case I retired I would be elected to the Rajya Sabha. But I dismissed the very idea of either retirement or bargaining political for a seat in Rajya Sabha. I told him that he should not talk to me on this subject.....I also told him that I might not get a single vote but even then I was not prepared to withdraw or retire.”

This deposition seems completely out of place when one has to take into consideration the two telegrams, Exhibits K and K-1. He dismissed the idea of retirement or bargaining political issues for a seat in Rajya Sabha when approached by his brother, on the 12th of February, 1957, but within two months a complete change takes place in him and he has no hesitation in sending the two telegrams, one to his erstwhile rival and the other to one of the leaders of the Congress organisation against which he has a number of grievances and against which he had made an aim of his life to oppose and see it defeated.

Issue No. 3.—I shall now take up this issue to consider whether the alleged retirement was lawful. The Petitioner has argued that even if this Tribunal finds the story of presenting Exhibit 14 by the Petitioner to be true, there was no legal retirement and the Petitioner is not affected in any way. He urges first that the notice of retirement was less than 10 days from the first day of the poll viz., 25th of February, 1957 and, therefore, it has no force, whatsoever. He relies on sub-section (2) of Section 55A of the Representation of the People Act, 1951. This sub-section is in the following words.

“A contesting candidate may retire from the contest by a notice in the prescribed form which shall be delivered to the returning officer between the hours of eleven o'clock in the forenoon and three o'clock in the afternoon of any day not later than ten days prior to the date of the first of the dates fixed for the poll under clause (d) of section 30 either by such candidate in person or by an agent authorised in this behalf in writing by such candidate.

I fail to understand how Exhibit 14 can be said to be invalid being later in time as prescribed in this sub-section. A day has to be taken as one calendar day and it has to be the 10th day before the 25th to find out whether the notice was in time. I construe the section in this way that it meant a calendar day when it prescribed the time limit and in that view I hold that Exhibit 14 was filed in right time to constitute a legal document entailing disability to the person presenting it as provided under sub-section (3) which reads as follows?

“No person who has given a notice of retirement under sub-section (2) shall be allowed to cancel the notice”.

It is then urged that the presentation of the form was invalid due to the same being signed at two places. It appears from Exhibit 14 that there are two parts. The first part is meant when the form (Form 12) is presented by the candidate himself and the second part is an authority to an agent by the candidate to deliver the notice to the Returning Officer on his behalf, that is, when it is not possible for him personally to present it. The Petitioner has signed at both the places. The spaces which are required to be filled up when an agent is authorised to deliver a notice in Form 12, have not been filled up, which shows that it was presented personally by the Petitioner. I fail to find how the existence of another signature in another part of the same form can render the document invalid, specially when no person had been authorised to present the notice on behalf of the Petitioner.

It is then urged that the signatures on Exhibit 14 should have been attested and the Returning Officer acted illegally in accepting a notice with unattested signatures. There is no provision of law or rules requiring attestation of such signatures and I hardly find any necessity for any attestation when a person known to the Returning Officer was presenting the notice himself.

It is also contended that a notice of this retirement should have been served on each of the contesting candidates according to the provisions of section 55A, sub-section (4) of the Representation of the People Act, 1951, read with rule 16, sub-rule (2) of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956. My attention has been drawn to the deposition of Shri Bholai Singh, (P.W. 14) who has stated that he did not receive any notice of retirement of the Petitioner from the election office or from the Returning Officer. This witness was the candidate for the Jan Sangh party. Shri D. S. Faujdar, the District Election Officer (P.W. 10), has stated at page 34, that the other candidates were informed of the retirement of Shri Mubarak Mazdoor. At page 35 he has again said that the copies of retirement notice (Exhibit 16) were sent by post to other contesting candidates and in usual course they must have been received. Again, at page 39, he has deposed that intimation was sent to all the contesting candidates on 15th February, 1957. His statement is corroborated by an endorsement on Exhibit 14 which runs as follows, “Copies affixed on the notice board and sent to other contesting candidates.” The failure to receive

such notice by P.W. 14, cannot, therefore, render Exhibit 14 invalid in any manner, when once it is proved to the satisfaction of the Tribunal that notices were actually despatched to the contesting candidates.

The Petitioner has also argued that the Returning Officer should have written the word "accept" on the withdrawal notice and that he should not have entertained the notice when he was not in his court but in his residential house. There is no provision of law requiring the Returning Officer to write the word "accept" on such a notice when it is presented before him. The Returning Officer has said that the Petitioner presented this withdrawal notice, Exhibit 14, when he was in the office of his residential house. There was no bar to receiving such a notice by the Returning Officer when he was in his office and it does not matter if that office was located in court building or in a building where he lived.

The Petitioner has argued that the Returning Officer should not have returned the withdrawal notice to him to be taken to the Election Officer's office and the effect of it is that there was no retirement. It must not be forgotten that the Returning Officer handed over Exhibit 14 to the Petitioner to give it to the District Election Office. He did so because he believed that it would be done as the person was no one but a candidate, from whom a high standard of integrity was expected. The circumstances do not disclose that Exhibit 14 was returned to the Petitioner. It was merely handed over to the Petitioner to be taken to the District Election Office. Therefore, if the Petitioner was given Exhibit 14, to be taken to the District Election Office, he was nothing but a mere messenger of the Returning Officer carrying out his directions. It has also been argued that a copy of the notice had not been affixed to the notice board according to sub-rule (2) of Rule 16, of the Representation of the People (Conduct of Elections and Election Petitions) Rules, 1956. This argument has no merit when there is a clear endorsement on Exhibit 14 that the copies of the notice had been affixed on the notice board.

Assuming for a moment that the notice of retirement was invalid in the eye of law and, therefore, there was no notice at all, the Petitioner cannot take any advantage of this alleged defect without proving that the result of the election has been materially affected by non-compliance of section 55A. The bonus rests upon the Petitioner and the evidence on the subject should not be speculative character but must be definite and affirmative as laid down in many decisions. At page 177 of the deposition he has stated that thousands of voters of Meja and Karchana had told him verbally that they had come to cast their votes for him but could not do so on account of the absence of his ballot boxes. It is strange, however, that these voters did not give him anything in writing and the Petitioner, himself, did not ask any of them to place a complaint in writing before him. According to him it was unnecessary but this is an absurd explanation. It was vitally necessary for him to take the complaints of the voters in writing or to tell them to make a protest before the authorities concerned. The Petitioner admits on this point that he did not ask these voters to send a protest to the authorities concerned and he did not, personally, see the Election Officer in this connection. No witness has come forward to depose that he came back from the polling station on seeing no ballot boxes of the Petitioner placed there. From all these the conclusion is irresistible that no voter complained to the Petitioner verbally as alleged by him and the result of the election, therefore, had not been affected in any manner whatsoever. Again, it is the Petitioner who is to be blamed if he chooses to take no more interest in the election contest. In that circumstance it does not matter whether he had retired by giving a notice under section 55A or had represented to the electorate by his conduct that he had actually retired. His conduct made it explicit to the electorate that he had nothing to do with the election contest. He went away from Allahabad at a crucial time abandoning all election campaign, if ever there was any. There was no poster, no manifesto, no hand-bill, no meeting, no sign of any campaign and no activity, even after the knowledge of absence of ballot boxes on the 25th of February, 1957 when the election in the city area had not been finished. Section 55A only provides that a contesting candidate may retire from the contest by a notice in the prescribed form. There is nothing in law to force a candidate to contest an election when he is not willing to do so. There may be another form of retirement which is by cessation from taking any interest in the contest. Section 55A has been enacted so that much public time and money is not wasted. According to sub-section (3), the candidate giving a notice of retirement cannot be allowed to cancel the notice and under sub-section (5), such person shall be deemed not to be a contesting candidate for the purpose of section 52. If by reason of any retirement from the contest, the number of remaining contesting candidates becomes equal to the number of seats to be

filled, the Returning Officer has then to forthwith declare all such candidates to be duly elected under sub-section (6) of section 55A. This sub-section mentions the utility of a retirement with notice as, in that case, sometimes, there will be no necessity for voters to come to the polling stations, and there will be no necessity for appointing polling officers and other officers for the conduct of the election, thereby saving time and money for the electorate for the candidates and also for the Government. The provisions of sub-section (7) of section 55A have also the same end in view with the difference that they relate to constituencies where seats are reserved for scheduled castes or scheduled tribes. It is significant in this connection to remember the difference between the duties of the Returning Officer under section 36, sub-section (2) of the Representation of the people Act, 1951, and under section 66A sub-section (2). Under section 55A(2) the Returning Officer has not to decide anything. He has simply to receive a notice of retirement, then give publication to the same, and afterwards countermand the poll if by reason of the retirement, the number of remaining contesting candidates become equal to the number of seats to be filled. It may be noticed that section 55A does not require notice to be given to the other candidates. Before the Returning Officer takes any action, the other candidates do not get any opportunity to scrutinise the validity of the action of the retiring candidate and if the argument of the petitioner is acceded to, then it will lead to this absurd position that any candidate can ruin any election by deliberately filing a defective notice. This position can hardly be tolerated in law, and the petitioner cannot be permitted to ask for setting aside an election when he, himself, is to blame and when nothing wrong has been committed either by the Returning Officer or by any of the contesting candidates.

Accordingly, I hold that the alleged retirement was lawful. This issue is answered in favour of the Respondent.

Issue No. 4.

This issue is in the following words,

"Whether the Petitioner was deprived of any electoral rights?"

The Petitioner has complained that he has been deprived of his electoral rights as he could not get a verdict of the electorate on account of the ballot boxes not having been placed at the polling stations. I have already held that it was he and he only who is to be blamed for not having an opportunity to get the verdict of the electorate. After his retirement which was perfectly lawful, he had only one electoral right left in him which was to cast his vote. He had no electoral right left to continue as a contesting candidate. This issue can be answered in another way by a reference to section 79, clause (d) of the Representation of the People Act, 1951. This clause defines "electoral right" stating that it "means the right of a person to stand or not to stand as, or to withdraw from being, a candidate, or to vote or refrain from voting at an election." It clearly contemplates three different types of that right and not more, which can be exercised by a person who is an elector according to section 2, sub-section (1), clause (e) of the Act. The first type of electoral right can be exercised by an elector when he presents a nomination paper to contest the election or decides not to do so. The second type comes at a later stage when it can be exercised by a candidate by withdrawing his candidature and the third type of the electoral right is the one, when, on the polling day an elector may choose to cast or not to cast his vote. When a candidate does not exercise his electoral right to withdraw, his right to contest naturally continues, but this right is extinguished when he retires from the field. After retirement, the candidate has no other electoral right but that of an ordinary elector which is to vote or not to vote at the election. This issue is also, therefore, decided against the Petitioner and I hold that he was not deprived of any electoral right.

Issue Added on 4th November 1957.—I shall now take up the issue which was added on the 4th November, 1957. This issue relates to facts concerning various types of corrupt practices said to have been committed by the Respondent or his election agents or some agents on his behalf. The issue is in the following words,

"Whether the facts contained in new schedule (A) Read with old paragraph 15, facts contained in new paragraph 17 and new schedule (c) and the facts contained in old paragraph 18 and new schedule (d) are correct?"

In paragraph 15 of the election petition it has been alleged that the opposite party committed corrupt practice of procuring and taking the assistance of Government servants to further the prospects of his election by himself, and through

his election agent and other agents with his consent. The details of such corrupt practices, which come within the purview of section 123(7), have been given in schedule 'A' attached to the petition. I may state here that the Petitioner has not led any evidence regarding procuring the assistance of Government servants nor has he adduced any evidence to prove the Respondent. He, himself, is not a witness to this type of corrupt practices, as shown in sub-section (1) of section 123, but has attempted to prove assistance rendered by Government servants through his witnesses. Schedule 'A', column 1, gives the names of the Government servants who are said to have rendered assistance to the Respondent. Those Government servants are five in number but there is no evidence relating to Shri Lal, P.R.D. organiser, and Shri Kampta Prasad Srivastava, Block Development Officer. The remaining Government servants, who are said to have rendered assistance to the Respondent by canvassing and by distribution of cards, are, Shri Bhari Lal, Sub-Inspector at Bara, Sukhdeo Ram Yadava, Naib Tehsildar, and U. S. Dixit, Industrial Advisor, N.S.S. Industries, Government of India. The Petitioner through one witness, namely, Mohammad Idris (P. W. 8), has tried to prove alleged assistance by another Government servant, Abdul Rashid, who is a Lekhpai. Any assistance said to have been rendered by this Lekhpai has not been mentioned in Schedule A and, accordingly, so far as this Government servant is concerned, the matter must be left out of consideration. About the canvassing, by Shri Bhari Lal, Sub-Inspector, at Bara, there is only one witness, Shri Krishn Prakash Tewari (P. W. 13) who has merely stated in cross-examination that he told the Petitioner that when the Congress party could go so far as to allow a Sub-Inspector to canvass for Shri Mangla Prasad, he should take all the precautions. That is all the evidence relating to assistance said to have been rendered by this Sub-Inspector. The petitioner has filed a judgment of a case before another Tribunal in which it was held that this Sub-Inspector did distribute some cards on behalf of Shri Mangla Prasad, the Congress candidate. In that case the Respondent was not a party and I am, therefore, not in a position to accept such a finding without any material relating to distribution of cards or canvassing by this Sub-Inspector on behalf of the Respondent. I may state here there is no evidence that the Government Officers named in Schedule A induced the voters to vote for the Congress candidate and also threatened them. Indeed, the Petitioner filed a separate sheet appended to Schedule A mentioning a large number of voters and workers who were alleged to have been threatened, but this part of the story has been given up during the trial as already stated. The Respondent (R. W. 35) has categorically denied these allegations and has stated at page 136 that he does not know Behari Lal, Sub-Inspector. He has moreover stated that no one of that name who is a Sub-Inspector, even worked for him. Again, at page 152, he has stated as follows;

"I do not know Shri Bihari Lal. I do not know if Shri Bihari Lal is a Sub-Inspector of Bara circle. I do not know if Shri Bihari Lal distributed cards or canvassed to the voters in favour of the Congress party. I do not know if Shri Bihari Lal was caught in the act of distributing cards and doing the propaganda in favour of some Congress candidate."

At page 167, he admitted that some cards had been printed in which his name was linked with Shri Mangla Prasad, the Respondent in the other case, but denied the distribution of these cards by Shri Bihari Lal. I am inclined to believe the Respondent and hold, accordingly, that the allegation about canvassing and distribution of cards by Shri Bihari Lal has not at all been proved by the Petitioner.

I shall now turn to the alleged canvassing and distribution of cards, holding and addressing public meetings, canvassing on sectarian lines, and bringing the voters to poll by one Sukhdeo Ram Yadav, Naib Tehsildar. The witnesses on this point on behalf of the petitioner are P. W. 6, and P. W. 13. P. W. 6 is one Shambhu Nath Srivastava, who has stated that he is a cousin of Shri Mangla Prasad, a Minister of the State, and knows Naib Tehsildar Sukhdeo Ram Yadav. He claims to have worked for the Respondent in the last election and has asserted that he is an old worker of the Congress. He has deposed that Sri Sukhdeo Ram Yadav was canvassing for the Respondent during the last election, that he wrote out cards and distributed them in support of the election of the Respondent and also addressed meetings in his support. He has further stated that this Sri Sukhdeo Ram Yadav used to move about and canvass for the Respondent in several villages. From the cross-examination of this witness, it appears that he held several posts from which he resigned, one after the other. Although he claims to be a relation of Shri Mangla Prasad and is said to have worked for him as well as for the Respondent, he exhibits a strange conduct by turning a summersault now by giving evidence which would go against the Respondent

directly and indirectly affect the case of Sri Mangla Prasad as well. He admits that in the other case, Shri Moti Lal Dwivedi v. Sri Mangla Prasad, decided by another Tribunal, he did not communicate to the Petitioner in that case the instances of corrupt practices about which he has deposed in this case. He has stated further that he did not tell any one about all that he deposed in this case on 4th January, 1958 and that the Petitioner Sri Mubarak Mazdoor, had never approached him. He has admitted that when a man was sent to him by the Petitioner, he did not know that he would have to depose against the Respondent. I fail to understand, therefore, how the Petitioner came to know what this witness was going to depose at the time of recording of his evidence. Admittedly, he was not an agent either for Sri Mangla Prasad or for Sri Lal Bahadur. He could not produce anything in writing to show that he had ever worked for the Respondent or Sri Mangla Prasad. He was not in a position to produce any card either written by Sukhdeo Ram Yadav or distributed by him. He was not in a position also to give the date of any meeting which was addressed by Sri Sukhdeo Ram Yadav. He has said that he believes in absolute truth and dislikes immorality. He also does not like anything which is illegal. He was aware that the Respondent was committing corrupt practices by using a national flag and was fully aware that a Government servant should not canvass for anybody. Yet, he admits that he went with Sukhdeo Ram Yadav to do canvassing and did not leave working for the Respondent and Sri Mangla Prasad even after knowing full well that corrupt practices on their behalf were going on. I shall presently show when I shall discuss about alleged distribution of cash and cloth, how far this witness has gone to support the Petitioner in a matter which was not even mentioned in the election petition. I am afraid no reliance can be placed upon such witness.

The next witness is P. W. 13, Sri Krishn Prakash Tewari. He has stated as page 49, that Sukhdeo Ram Yadav, a consolidator in the Consolidation Department, canvassed for the Congress party, distributed cards, held meetings and canvassed on sectarian lines. This witness, I will presently show at the time when I will discuss the evidence about distribution of cash, cloth etc., to be a thoroughly unreliable one. He has admitted that he is a secretary to the Praja Socialist party. He, himself, is a lawyer and his father was at one time a Congress man, but in the last election, was helping the Praja Socialist party. He has admitted at page 52 that his father was an election agent of Sri Salik Ram Jaiswal, a Praja Socialist party candidate. There can be no doubt of any kind that being a lawyer, he had some responsibility and was more in a position to discriminate between legality and illegality of various practices which were going on during the election. He has also deposed about the use of the national flag by the Respondent and his workers. Strangely enough, although he was a witness to several types of corrupt practices, he did not submit any complaint in writing to any authority, nor did he object either to Respondent or to Srimati Indra Gandhi who were said to have been using the national flag. At page 54 he has said that Sukhdeo Ram Yadav was distributing cards and canvassing for the Congress party about one month before the polling day and he complained in writing against this Sukhdeo Ram Yadav for the first time on the date of polling on 25th February, 1957. He added, immediately that he, personally, did not complain but his two other agents did so. According to him his two agents complained in writing to Sri K. L. Kocher who was the presiding officer of Upraula polling station. But, neither Shri Kocher has been examined nor any complaint proved in this case. He was forced to concede that personally he did not make any complaint in writing about the activities of Shri Sukhdeo Ram Yadav, although he was fully aware that these activities amounted to corrupt practices according to election law. He was also fully aware that the activities of Sukhdeo Ram Yadav would damage the cause of the candidate whom he and his father were supporting. But, strangely enough, he did not move his little finger to stop such activities on behalf of Sukhdeo Ram Yadav. He even did not protest to Sukhdeo Ram Yadav. He explains that he did not make any complaint in writing before the District Election Officer, Sri Faujdar (F.W. 10), because his father had already submitted a written complaint about this man, Sukhdeo Ram Yadav. No complaint in writing has been proved in this case regarding any alleged corrupt practice committed by the Respondent or by somebody on his behalf. The witness has, again, admitted when deposing about the distribution of cash, cloth and wine, that he did not send any telegram and did not complain to anybody in writing about such distribution. It appears to me, that the witness was prepared to make any number of false allegations in order to support the Petitioner with a view to setting aside the election which would give his party another opportunity to fight it out.

The Respondent has examined this Sukhdeo Ram Yadav who is R.W. 29. He has denied the allegations categorically levelled against him and has said that as he was ill before the election, he could not move about actively at that time. He has stated in cross-examination that he was under the treatment of Dr. Arora, Dr. Babu Lal and was also examined by the Civil Surgeon either in June or July, 1957. The Respondent (R.W. 35) has stated at page 135 that he had never seen any one named Sukhdeo Ram Yadav said to be a Naib Tahsildar and no one of that name worked for him. He has denied that any Sukhdeo Ram Yadav wrote out cards for him, distributed them and addressed meetings on his behalf. I have no hesitation in believing him and R.W. 29. Accordingly, I reject the evidence of P.Ws. 6 and 13 as being utterly untrue. The result, therefore, is that the Petitioner has hopelessly failed to establish the charge of corrupt practice under section 123(7) of the Representation of the People Act, 1951, so far as these two officers are concerned.

As regards Sri U. S. Dixit, there is no evidence led by the Petitioner that he ever canvassed or distributed any cards, threatened or induced any voter or distributed loans etc. The Respondent at page 151, has stated about this Sri Dixit and has denied the allegations which were made by the Petitioner in Schedule A. According to him, Sri Dixit had resigned from his post before the election and, therefore, no question of procuring or obtaining of any assistance from a Government servant arises.

I shall now refer to the amended paragraph 17, which relates to contravention of the provisions of section 77 of the Representation of the People Act, 1951, read with rule 135 of the Representation of the People (Conduct of Elections and Election Petitions) Rules of 1956, which fix the maximum election expense in the case of a single member Parliamentary constituency in one state as Rs. 25,000. The allegations in paragraph 17 are:—

1. The Respondent spent a sum of Rs. 2 lacs as his expenses of the election; 2. he did not maintain an account as required under section 77 of the Representation of the People Act; 3. he has concealed the expenses incurred by him under different heads of expenditure and 4. he has submitted a false statement of accounts of the election expenses incurred by him. The details of the general allegations mentioned in paragraph 17 of the election petition are to be found in the amended schedule 'C'. There are two items under this schedule. Item no. 1 relates to public meetings addressed by Srimati Indra Gandhi, Sri Dhebar Bhai, Sri Jagjiwan Ram, Sri Murarji Desai, Sri Jawahar Lal Nehru and the Respondent between 30th January to 12th March, 1957. This includes the meetings held at Urwa and Rampur addressed by Shri Jawahar Lal Nehru on 20th of February, 1957. The other meetings are said to have been held at Rani Mandi, Gaughat, Ahujapur, Gariwan Tola, Teliarganj, Manfordganj, Harijan Ashram, Kitganj, Katra, Colonelganj, within the jurisdiction of 333, Allahabad Parliamentary constituency in the city of Allahabad and tehsils of Meja and Karchana. Item No. 2 relates to travelling expenses of all these persons who came to canvass and made public speeches for the Respondent in order to appeal for votes. In column no. 4 it is stated that actual places are not known but they must have travelled between Allahabad and stations of origin where from they came and the stations of destination for which they left from Allahabad. In column No. 2 under the heading "date of expenditure" it has been stated that it is for the opposite party to declare the dates.

The Petitioner's witnesses with respect to this charge are P.Ws. 5, 6, 8, 12, 13, 15, 20 and 21. P.W. 5 is one Jagat Narain Gupta, a sweet-meat vendor, who, at present is a member of the Praja Socialist party. According to R.W. 30, Someshwar Nath Chopra, a Congress worker, this witness was also a member of the Praja Socialist party at the time of the election. He, P.W. 5, has stated that there was a political meeting held at the foot of the Allahabad Bank building where a national flag was hoisted and after the meeting dispersed, there was a tea party where 250 or 300 persons were fed. The Petitioner's grievance is that this item of expenditure has not been shown by the Respondent. This charge did not find place anywhere in schedule 'C'. Moreover, the witness has been contradicted by an independent witness, Sri N. D. Agarwal (R.W. 31) who has stated that, as the Chief reporter of the *Leader*, he attended this function on being invited by an invitation card on the 19th November, 1956, and reported the proceedings of the function. According to him this was the annual function of the Loknath Hitkarni Sabha and not a political meeting. He has contradicted P.W. 5 about the use of national flag at the meeting and also about the speech of Srimati Indra Gandhi. The witness is an independent one and I feel no hesitation in accepting his evidence as against that of P.W. 5.

P.W. 6, about whose evidence I have already made some observations, has deposed about two meetings, one at Nanhai and the other at Bharatganj, which do not find any mention in schedule 'C'. He says only by guess that about Rs. 1,000 or Rs. 1,500 must have been spent in each of these meetings. The next witness on the subject is P.W. 8, Mohammad Idris, who has deposed about the meeting at Urwa addressed by Shri Jawahar Lal Nehru and another meeting at Ramnagar, which has not been mentioned in schedule 'C'. According to him a sum of about Rs. 15,000 was spent at the Urwa meeting and Rs. 1,000 in the Ramnagar meeting. He also tells about this expenditure by estimate and does not refer to any particulars, from which the actual expenditure can be ascertained. P.W. 12 speaks of a meeting at Kayesth Pathshala addressed by Shri Jawahar Lal which does not find mention in Schedule 'C'. According to him, a sum of Rs. 15,000 or Rs. 16,000 was spent in this meeting but, that is, according to his estimate, which discloses no particulars. P.W. 13 speaks of the meeting at Urwa which was addressed by Sri Jawahar Lal and two meetings at Ramnagar and Bharatganj which were addressed by Srimati Indra Gandhi. The meetings at Ramnagar and Bharatganj do not find any place in Schedule 'C'. According to his estimate about Rs. 25,000 was spent in the meetings addressed by Srimati Indra Gandhi and about Rs. 15,000 to Rs. 20,000 in the meeting addressed by Sri Jawahar Lal Nehru. These expenditures are also according to guess. P.W. 16 has stated about two meetings, one at Baghara and another at Kayesth Pathshala, which places are not mentioned in schedule 'C'. The evidence of P.W. 15 has been contradicted by R.Ws. 8, 9, 10 and 23. He has also told merely by guess that the Congress spent about Rs. 7,000 or Rs. 8,000 in each of these meetings. P.W. 20 has deposed about meetings at Swarup Rani Park, Bachchaji Kothi and other places not mentioned in schedule 'C'. According to him a sum of Rs. 50,000 was spent in all the four meetings. He deposed about this according to his estimate without giving any details of the expenses. The last witness on the subject is P.W. 21, who has deposed about a meeting at Karchana railway station and at Bardha, which places have not been mentioned in Schedule 'C'. He has said by guess that a sum of Rs. 4,000 or 5,000 was spent in each of these two meetings.

The position, therefore, is this that the evidence relating to huge expenses incurred at meetings has been given in connection with only one, that is, the meeting held at Urwa and addressed by Sri Jawahar Lal Nehru. No evidence has been led about the other places where Respondent is said to have incurred expenses as mentioned under the heading "place of expenditure", in schedule 'C'. Again, the expenses said to have been incurred at Urwa and other places have been deposed by guess and estimate and not by furnishing particulars or details by which I could decide, one way or the other, as to how much money had actually been spent by the Respondent. There can be no doubt that these witnesses have very much exaggerated the expenses in order to support the Petitioner. I am not in a position to attach any reliance upon their estimates when one witness (P.W. 13) who is a lawyer and a secretary of the Praja Socialist Party has admitted in cross-examination, when confronted with the expenditure incurred in the meeting addressed by Acharya Kripalani, that a sum of Rs. 20 only was spent. He has deposed about two meetings, one held at Bharatganj and the other at Sirsa addressed by Acharya Kripalani were about 10,000 persons were present. He personally spent the money and a sum of Rs. 20 was spent in the Sirsa meeting and a similar sum of Rs. 20 was spent in the Bharatganj meeting addressed by Acharya Kripalani. I fail to understand when such mammoth meetings could be held on a nominal expense of Rs. 40 only, the expenses of the meetings of the Congress, including those addressed by Shri Jawahar Lal Nehru, would run into thousands. Accordingly, I hold that the Petitioner has hopelessly failed to establish expenditure over Rs. 25,000 by the evidence adduced under this head.

About travelling expenses of the persons who are said to have addressed those meetings as given in the first part of the schedule, the evidence is hopelessly inadequate to sustain a charge of corrupt practice. In schedule 'C', it is virtually admitted that the details about the dates under this head were not known to the Petitioner. No details has been given from which place these persons came to Allahabad and then left for separate destinations. The Petitioner should have mentioned the places where they came and where they went. The Respondent was not responsible for any expenses incurred by these persons if they did not return to the places from where they came but went to some other unknown destinations. Without any details or particulars, it is impossible for me to hold that the travelling expenses of the six persons, separately or taking together with the expenses of the public meetings, have exceeded Rs. 25,000. The respondent in his account of election expenses (Exhibit 19) has shown R. 11438/13/9 as the total amount spent by him in the election. Hence, he would not have infringed any law even

if he had spent another such sum and something more. The Petitioner could very well point out these expenses by some cogent evidence but this he has signally failed to do.

The Respondent has stated in this connection that the all India Leaders mentioned in Schedule 'C' came to Allahabad and went away from this place on their tour in support of the Congress candidates at various places. Therefore, he was bound in law to show only that portion of their expenses which those persons incurred during their stay at Allahabad to address some meetings. He has mentioned about his share in the joint expenditure incurred with Shri Jawahar Lal Nehru at page 11 of his account and at page 10 also he has shown his share with relation to various expenditure. He has stated that these leaders of the Congress organisation were on tour throughout India and there was no question of his bearing their travelling expenses throughout their entire tour. It has also come out in evidence that these leaders addressed the meetings, exhorting the audience to vote for the Congress and casually mentioned the names of the candidates in those constituencies from which they had stood.

Conscious of his inability to prove expenditure beyond Rs. 25,000 incurred either in the public meetings or in the travelling of those leaders, the Petitioner has introduced by the back door another type of expenditure, that is, expenses incurred in the distribution of cash, cloth and wine by the Respondent and by some others on his behalf. Those instances, if proved, could have established the commission of a major corrupt practice by the Respondent, but as this attempt was not made at the earliest stage, it was introduced in this way that the Respondent and his workers spent money on these items and these had not been shown in the account (Exhibit 19) which resulted in violation of the provisions of section 77 of the Representation of the People Act, 1951. The witnesses who have deposed about distribution of cash, cloth and wine are P.Ws. 6, 11, 12, 13, 15, 17, 20 and 21. No particulars of these instances were either given in paragraph 17 or in schedule 'C'. P.W. 6 is Shambhu Nath Srivastava, the same witness who stated that he had worked for the Respondent and his cousin, Sri Mangla Prasad. I have already given some reasons to disbelieve him. He has said that the Respondent paid Rs. 300 to one Babu Jagdish, a nephew of Sri Mangla Prasad, when he came to his village one day after candle light time. He has also deposed that the Respondent paid Rs. 5 to an old woman. He could not give the name of this woman to whom this money was paid. He was not in a position to give the name of her son, or father or her husband. He says that he protested to Sri Lal Bahadur Shastri when this money was paid to the woman but it is too much for me to believe him. The next witness is P.W. 11, Sri Bashir Ahmed. According to him, the Respondent came to his door and distributed *dhotis* and cash to the wives of Ram Achal, Dasrath and Raj Rup, and distributed cash to Bhugal, Khatai, Dangar, and Khilari. None of the recipients of the cash and the *dhotis* has been examined. He admits that he did not know the Respondent from before and he came to know that he was the Respondent because the People were saying that he was Sri Lal Bahadur. He could not give the date on which the Respondent came and distributed the cash and the cloth. This witness has further stated that the Respondent offered him also a *dhoti* and cash but he refused to take the same. The suggestion to this witness was that he was a member of the Praja Socialist Party. P.W. 13, Sri Krishna Prakash Tewari has spoken about the distribution of cash and *dhotis* and is the only witness to depose about the distribution of wine also. He is a thoroughly interested witness and at the same time, in my opinion, equally untrustworthy. Although a lawyer and a Secretary of the Praja Socialist party, whose father was working on the counting days, for a Praja Socialist party candidate, he did not think it worth while to send a telegram or complaint about these distributions to the authorities. He has said that he saw the distribution of cash, *dhotis* and wine in Sirsa, at rural area, and also in Naya Purwa in the city (north constituency). He admits that Naya Purwa is a part of the city and there are telephone installations there. He has also admitted that there is a telegraph office in village Sirsa. It is not at all believable that this witness, would see this major corrupt practice being committed in his presence and would not stir to inform the authorities. He goes even so far as to say that he saw the distribution of wine in the house of a lady teacher of Municipal Board of Naya Purwa, who was a *pasi* by caste. It is from the smell that he could understand that she was being given a bottle of wine. I am afraid no reliance can be placed on this witness. P.W. 15 is Vijai Pratap Singh Rathor, a student, who has said that he saw the distribution of cash and *dhotis* in the Baghara meeting. From his evidence at pages 63 and 64, it appears that the witness has the same ideology as that of the Praja Socialist Party. At page 65, he has said that he did not go to the Petitioner on the date of distribution nor did he report the matter to him. He further said that till the day of his deposition he did not tell about the distribution of the money to the Petitioner. He was also not in a position to say who was actually

distributing the cash. He was further unable to speak about the houses where the saris were distributed. He was not in a position to name those women who had received the saris. To me, this witness also appears to be thoroughly untrustworthy. P.W. 17, Ishtiaq Husain Mirza is another witness on this subject. He has said that Rai Ram Charan Agarwal (R.W. 28) was his school mate, and one day, while he was walking on the road, he met him. Rai Ram Charan handed him over some posters and two hundred rupee notes. With this amount he fed the workers and took them to cinema houses. Rai Ram Charan (R.W. 29) has contradicted this witness and it is difficult for me to believe why so much money would be put in his pocket when he holds no position in the Shia community to which he belongs. He has stated as follows,

"I am neither a President nor secretary or any office bearer in the Shia Community. I cannot give the number of Shias in my *mohalla*. I am not a President nor a secretary nor any office bearer of any Muslim organisation or institution. I am not a President or secretary nor any office bearer of any organisation of any kind."

There is no witness about delivery of these two hundred rupee notes and the posters, and it is strange how the Petitioner could get hold of this witness when prior to the date of his deposition he did not tell anything about what he had deposed to the Petitioner. P.W. 20 is one Abdul Rashid also known as *deshti vakti*. He has denied being a member of the Praja Socialist party but Sri Abdul Rauf (R.W. 22), a respectable and substantial man, although belonging to the Congress party, has deposed that he is such a member. He is not in a position to give the names of the recipients of the cash and the cloth. He is an ordinary hawker having two wives and 9 children, and earning about Rs. 5 or Rs. 6 per day. He says that he did know that distribution of cloth and cash was a corrupt and immoral practice, yet he did not protest to Sri Lal Bahadur. He only protested to his alleged maternal uncle, Sri Abdur Rauf (R.W. 22) who does not support him. He has admitted that the persons who received the cash and cloth belonged to the same *mohalla* but it is strange that he could not give the name of any such person who received those gifts. He has admitted that he had been on friendly terms with the Petitioner which explains his figuring as a witness and telling about instances which did not find mention in schedule 'C'. The manner by which he happened to meet the Petitioner and tell him about what he had seen and heard is also very suspicious. The last witness on the point is Sri Kamla Kant Sharma, P.W. 21. He has deposed that one day the Respondent visited his village in a car flying a national flag and in his presence the Congress workers distributed cash and *dhosis* to the villagers. He then added that the Respondent himself distributed *dhosis* to Nandu Kol, Madho Kol, Bideshi dhobi, Parbhu dhobi, and Ram Lal Vaish. He has admitted at page 95 that he was an agent of one Sat Narain Pandey, a Praja Socialist Party candidate. It is strange that he did not write to Sri Sat Narain Pandey or informed him through any messenger about the commission of these corrupt practices. At page 96, he has said that he did not tell any one about what he deposed in court and it is strange how he has been examined by the Petitioner. His past history as a postmaster does not appear to be very good, and it is strange conduct in a man who, after receiving some benefit, comes to depose against him. He has said that he was not getting any *takavi* loan and so complained to the Respondent and the Respondent noted the matter in his pocket book and said that everything would be set right, after which he received Rs. 500 as *takavi* loan. The witness has stated that he had never met the Petitioner before and he did not inform him about the distribution of cash and *dhosis*, even till the date of his deposition. It is rather queer that witness will be cited by the Petitioner without knowing what he was going to depose. He has admitted about canvassing being done by workers of other parties and knew that acceptance of *dhosis* and cash amounted to taking of bribe, even then he did not inform such canvassers about these alleged distributions. The Respondent has examined Madho Kol (R.W. 18) and Ram Lal (R.W. 17). Both of them denied having received any cash and cloth from the Respondent or his workers, and I am inclined to believe them. On behalf of the Respondent the following witnesses have been examined to disprove the distribution of cash, cloth and wine. They are R.Ws. 1, 2, 3, 5, 6, 8, 9, 11, 12, 16, 17, 18, 20, 21, 30 and 33. The Respondent (R.W. 35) has also denied the distribution of cash, cloth and wine. I fully believe these witnesses and the Respondent, and hold that no cash, cloth or wine was distributed by the Respondent or any of his workers.

The Petitioner has also led some evidence about tea parties, whose expenses have not been shown in the account (Exhibit 19). It has been denied by the Respondent and some of his witnesses. There is no necessity to deal with this matter, as the evidence is too scanty and the particulars did not find any mention either in paragraph 17, or schedule 'C'.

Regarding posters said to have been brought from Delhi, it may be stated that no mention was made of them either in the petition or in the schedule 'C'. It has not been proved that on these posters which were brought from Delhi, either the name or likeness of the Respondent appeared. There is no evidence how much money was spent for printing all these posters, and there is no material to indicate special knowledge of the Respondent with regard to these posters and their printing expenses.

Although the account of election expenses has been proved in this case, the Petitioner has failed to point out any item in it which was irregular. I have scrutinised the accounts and I find nothing which can be said to be out of order. All expenditure on various items have been shown, including fooding expenses, purchase of electoral goods, washing charges, conveyance, printing of hand-bills, purchase of bamboos and strings for flags, etc. Labour charges for pasting posters, cost of petrol and mobil oil, rent and hire charges of *durries*, *shamianas* and printing of notices have also been shown. As already pointed out, the Respondent's share in joint expenses has also been disclosed, and rent charges for telephones, premises for office, including electric charges from 8-2-1957 to 15-5-1957 have also been shown. The Petitioner practically led no evidence about election offices of the Respondent, but cross-examined the witnesses for the Respondent and the Respondent himself, to establish that they were several election offices and their expenses had not been shown in Exhibit 19. The particulars about these election offices should have been mentioned in the election petition or in the schedule, but this has not been done. On a consideration of all the evidence by and against the Petitioner on the subject of expenses based on paragraph 17 and schedule 'C', I hold that the Petitioner has totally failed to prove that the Respondent spent a sum in excess of Rs. 25,000. The Petitioner has also failed to prove that the Respondent did not maintain any account as required by section 77 of the Representation of the People Act, 1951, that he concealed the expenses incurred by him under different heads of expenditure, and had submitted a false statement of accounts of the election expenses incurred by him.

I shall now advert to the alleged commission of corrupt practice by using of national flags as mentioned in paragraph 18 read with schedule 'D'. It is stated in paragraph 18 read with schedule 'D'. It is stated in paragraph 18 that the Respondent, his election agent and other agents with his consent used the national flag on their motor vehicles on election work, the details of which were given in Schedule. In schedule 'D' it has been stated that on all dates inclusive from the 20th January to 24th February, 1957, at Kurwa, Bharatganj, Ramnagar, Sirsa, and Koraon, Maja Khas, Shankargarh, Karchana and Bara national flags were flown by the Respondent, his workers and supporters, Sri Jawahar Lal Nehru, Srimati Indra Gandhi, Munshi Mangla Prasad, Dhebar Bhai, Sri Morarji Desai and many Congress workers and canvassers, including Sheomurti Singh, Sarju Prasad Pandey, Babu Ganesh Datt, Badri Guri, Ajai Basu, and Shahu, Sri U. S. Dixit, Sri Kudesia and Sri M. P. Bhargawa. The occasion is said to have been while canvassing and moving about for holding public meetings. These person are also alleged to have been guilty of flying national flags on cars and in public meetings at other places also between 28th of January to 12th of March, 1957. The witnesses who have deposed about the flying of the national flag are P.Ws. 1, 5, 6, 8, 11, 12, 13, 15, 17, 20, and 21. P.W. 1 is an interested witness inasmuch as he was a polling agent of Sri Radhey Shyam Pathak, the Praja Socialist party candidate, who was a rival of the Respondent. His father, Sri Salik Ram Jaiswal was also a candidate for the Assembly seat during the last election for the Praja Socialist party. He has stated that during election he used to see the Respondent moving about in a jeep-car and saw the national flag fixed on it. He admitted in cross-examination that he saw many cars using Congress flags and Kapur Sahab and Kailash Narain Gupta also using the same. I do not understand why the Respondent will wilfully take the risk of flying national flags in his constituency during day time. P.W. 5 is the same sweet-meat vendor whose story about the tea party in the Allahabad Bank premises has been disbelieved. He has become a Member of the Praja Socialist party and according to one of the witnesses of the Respondent, namely (R.W. 30), he was already a member of that party during the election. He has said that the Respondent and Sri Rai Amar Nath came in a jeep-car and he saw the national flag attached to it. He has also said that a national flag was hoisted at this meeting. The hoisting of the national flag at the meeting has been contradicted by an independent witness, namely, N.D. Agarwal (R.W. 31) who has said that he did not notice any national flag in the function. This witness (P.W. 5) was certainly making an untrue statement when he said that that meeting was a political one. R.W. 31 has disclosed the correct nature of the meeting which was not at all political. It was merely an annual function of a particular institution. P.W. 8 in an ordinary Bangle seller who has admitted that in the last general

election his sympathies were with the Praja Socialist party. Again, after some time he has said in examination-in-chief that his sympathies were with the Congress. He has deposed about the assistance rendered by one Abdul Rashid, the Lekhpal about whom I have already discussed in a previous part of my judgment. He has said that this Abdul Rashid wrote to him to work for the Congress but this letter has not been produced. According to him the Respondent had come in a car in the meeting held at Ramnagar and he was flying a national flag on it. He has stated in cross-examination that there was no special cause for him to examine the flag attached to the Respondent's car and, actually, he did not closely examine it. P.W. 11, has said that the Respondent had come to his village for canvassing accompanied by his brother Rasid Ahmad, the Lekhpal. He has, however, only said that a small flag was attached to it and it was of khaki colour. I have already disbelieved his evidence regarding the distribution of such and cloth. He was not in a position even to identify the Respondent as he had not seen him before and, actually, his evidence is not of any importance as he has not stated that the flag was a national one. Sri Ram Ji Dwivedi (P.W. 12), is, admittedly, a whole time worker of the Praja Socialist party. I have already doubted about his version regarding the notice of withdrawal (Exhibit 14), and about his estimate regarding the expenses incurred at various meetings. He has said that the Respondent was moving about the town and in Meja and Karchana tahsils in various types of cars and all these cars had national flags attached to them. He admitted that he was working for the defeat of the Congress candidate and said in cross-examination that there was no question of going close and examining the flag whom he could see them from a distance. He, however, did not make any complaint orally or in writing to any polling or Returning Officer about Sri Lal Bahadur using the national flag. Being a whole time worker and a person bent upon seeing the defeat of the Congress, it was expected that he would at once rush to the authorities to complain about this commission of corrupt practice. This he did not do. He has explained it by saying that he did not complain to the authorities because he had seen the Respondent's car flying the national flag 4 or 5 days before the polling and not on the date of polling. He, however, admitted that he did complain to his party bosses about the use of national flags, but, strenuously enough, there is no evidence of any grievance, made by these bosses before the election authorities. I find it difficult to attach any importance to the evidence of this witness. P.W. 13, the witness whose evidence I have already rejected in connection with the distribution of cash, cloth and wine and some other allegations, has said that Sri Lal Bahadur was moving about in cars with national flags attached to them. He has also stated that national flags were attached to other cars in which Srimati Indra Gandhi was moving about. From his cross-examination at page 53, it appears, however, that he did not submit any complaint to any authority about the use of the national flag on the cars of Srimati Indra Gandhi and the Respondent. He also did not object either to Srimati Indra Gandhi or to Respondent about the use of the national flag. There can be no doubt that this witness has invented the story about the use of national flag for the purpose of harming the Respondent. P.W. 15, an ex-student, harbouring similar ideology as that of the Praja Socialist party, has said that the Respondent and Srimati Indra Gandhi were moving about in the town in their cars flying the national flags. This witness tried to impress on me that he was being made a victim of threat and assault because he was deposing against the Respondent. At the beginning of his examination-in-chief he said that one, Sri S. N. Upadhyaya, an Advocate, appearing on behalf of the Respondent, approached him not to give evidence against the Respondent, tempted him with an appointment in foreign service and threatened him that he would get him involved in a murder case, in case he appeared against the Respondent. He further added that when he was coming to court to depose, some person met him and told him that they would break his leg if he deposed against Sri Lal Bahadur. Evidently, this story was introduced to prejudice the Tribunal against the Respondent and one of his lawyers Sri S. N. Upadhyaya. In Cross-examination the matter was made clear as to why he was making wild allegations against the advocate. It appears that there is a criminal case going on between him and others, in which Sri S. N. Upadhyaya is appearing as lawyer for the opposite party. He did not complain about the threat by lodging any information at the police station. This student has no house of his own in Allahabad, but considers the house belonging to his father's sister as his own. He had said that he verbally told a Sub-Inspector about the threat, but there is no evidence that he actually had done so. He is said to have been in possession of a house at 5, University Road, which, admittedly, does not belong to him. Although, in possession he could not give the name of the owner; nor the rent which payable. He has said that the tenant of this house is Samajbadi Yuvak Sabha and he is its secretary but has admitted that he has not paid any rent for the last one year, and cannot say as to who is responsible for the payment of the rent. I doubt very much if this witness at all

resides in Allahabad. To me, it appears that he has been brought in this case by the Petitioner to support him about the various allegations made against the Respondent. I do not at all place any reliance on him. P.W. 17 is another witness on this subject and has stated about the use of the Congress flag in a meeting which was held inside a mosque in Bakshi Bazar. He has also stated that he saw the respondent using the national flag while moving about in his car. The meeting in the mosque at Bakshi Bazar was for the first time introduced by this witness. I have already dealt with the evidence of this witness in connection with the alleged receipt of Rs. 200 from Sri Raj Ram Charan. This witness has gone so far as to say that a sum of Rs. 50,000 in his estimate was spent for Muslim voters. There can be no doubt that this witness was trying to help the Petitioner with scant regard towards truth. P.W. 20 is another unreliable witness who has deposed that he saw the Respondent moving in a jeep-car during the last election flying a national flag and he had seen also Srimati Indra Gandhi flying a national flag while moving about in her cars. I have discarded his evidence regarding distribution of cash and cloth and also regarding his estimate about expenditure in the meetings. This witness has deposed about a meeting in the house of one Hafiz Gazanfar Ullah, where, it is stated, he went. According to him Sri Bishambhar Nath Pandhey delivered a short speech, saying as follows,—

“My experience is that Mohammadan workers and voters cannot work and vote for the Congress without taking some money and there is need for some money.”

The Respondent is then alleged to have said, “I will arrange this money through Sri Bishambhar Nath Pandey and he will hand over the money to Hafiz Gazanfar Ullah and he will distribute the money amongst the Mohammedan Workers and the voters.” It is admitted by this witness this was a big meeting of the Muslim workers. It is unbelievable that in such meeting a Hindu will cast aspersions against the honour of the Muslim community. The witness realised this and stated in cross-examination that as mark of protest he left the spot. He is, admittedly, a friend of the Petitioner and it appears that he can go to any length to support him against the Respondent. The witness has said that Sri Abdul Rauf (R.W. 22) is his maternal uncle. This maternal uncle who is R. W. 22, has stated on oath that Abdul Rashid is a Praja Socialist party member. I have already found that this R. W. 22 is a respectable and substantial man. He has contradicted categorically the wild allegations made by this witness, P. W. 20. He was present at the meeting in the house of Hafiz Gazanfar Ullah and has stated that Sri Bishamghar Nath Pandey never addressed the meeting in the way that unless the Mohammedan voters were paid they would not vote for the Congress. He also contradicted this witness, P. W. 20 about the distribution of cash and cloth. The other witness on behalf of the Respondent is R. W. 16, Syed Nurul Hasan who is a respectable lawyer of long standing. He, too, was present in the meeting in the compound of Sri Gazanfar Ullah. He has said that Bishambhar Nath never said in the meeting that Muslims would not vote for the Congress unless they were paid money to do the same. He has stated in cross-examination that such a statement by Bishambhar would have been an insult to the Muslim community and that there was no such talk or speech in that particular meeting that the Muslims would not vote without being paid in money. I hold, accordingly, that this witness for the Petitioner (P. W. 20) is thoroughly unreliable. The last witness is P. W. 21 who has stated that the Respondent had visited his village in a car flying a national flag. I have already found the evidence of this witness unreliable. In cross-examination he has said that he saw this car of the Respondent from a distance of 5 or 10 paces and did not go near it. He has said that the flag was down and not furled and that he did not go near the car and observe it minutely whether the flag was a national one. The witness did not complain or protest about the use of the national flag by the Respondent. Some of the Petitioner's witnesses, namely, P. W. 1 and 5, have admitted that the flag used by the Respondent was 3 or 4 inches in length and 3 or 4 inches in breadth, and they were made of Khaddar cloth. The only difference between a national flag and Congress flag is that whereas there is the emblem of Charkha on the Congress flag, there is an emblem of Chakra (Wheel) on the national flag. It is very difficult to say, specially when the flag is a small one and down and unfurled, whether it is a national flag or a congress flag. It is easy for any one to depose that he had seen the Respondent and his other workers flying national flags when they were actually flying Congress flags on their cars. P. W. 2 at page 44 has admitted that no national flag was used by the Congress at its meetings, and I cannot understand, therefore, why the Congress candidates would take it into their head to fly the national flag while moving about in their cars. They were taking a very grave risk as they were moving about using the

national flag in broad day light, both in the town area and in the mofussil area where other rival parties were also working. It is difficult for me to believe that if the Congress candidates, including the Respondent, were flouting the law openly, all the rival candidates would remain silent and would not point out this gross corrupt practice to the authorities concerned who were easily available either by telephone or telegram. Accordingly, I reject this charge of using national flags either on the cars or at the Congress meetings.

After this finding there is hardly any necessity to discuss the Respondent's witnesses who have denied about the use of national flags. I may simply refer to them and state that they are far more reliable than the witnesses examined on behalf of the Petitioner. These witnesses on behalf of the Respondent are R. Ws. 1, 2, 3, 5, 6; and 16. R.W. 35 has also examined himself and has denied the use of the flag by him and by Srimati Indra Gandhi at pages 134 and 135. He has also said that no one on his behalf did fly the national flag on any car and he could say this with certainty. R.W. 1 is Sri Dakhi Lal, who has derosed about Srimati Indra Gandhi's presence in a meeting at Nayagaon. He has said that only a Congress flag was attached to the bonnet of her car and this flag was made of khaddar with an emblem of *charkha* on it. He has not done any work for the Congress and although he has said that in his judgment the Respondent was the best candidate, he did not canvass for him. To me, he appears to be an independent witness. R. W. 2 was a Congress worker during the last election. He has deposed about the use of a Congress flag and not national flag. R.W. 3 is another worker of the Congress who has deposed about the use of Congress flag on the car of the Respondent. This witness had sympathies with the Congress and worked for this organisation in the last election. Another Congress worker who has deposed about the use of Congress flags and not national flags is R. W. 5, Sri Kallash Nath Gupta. He is a member of the Legislative Assembly and a Graduate in Science and Law. R. W. 6, Sri Bhola Nath has also deposed about the Respondent flying only a Congress flag. He has denied that he is a priest of Rai Amar Nath and has said that he did not apply for getting any pension as a political sufferer. He belongs to the Congress party and worked for the Congress during the last election. The last witness is R. W. 16, Syed Nurul Hasan. He has said that he presided over the meeting in which Srimati Indra Gandhi delivered a speech and that no national flag was flown in that meeting. I have already given my reason for believing this witness and it does not appear to me that he is a person who would be out to tell falsehood in order to support a particular candidate.

The position, therefore, is this that all the facts contained in new Schedule A, read with old paragraph 15, the facts contained in new paragraph 17, and new schedule C, and the facts contained in old paragraph 18 and new schedule D, are incorrect. This issue is decided against the Petitioner. To my mind, the Petitioner has entirely failed to prove these charges of commission of corrupt practice by the Respondent. I believe further that these charges are wholly untrue.

Issue No. 5.—There is no necessity to decide this issue relating to alleged corrupt practice of bribery as contained in schedule B-2, as the Petitioner has given up the charge as already stated.

Issue No. 12.—This issue must be answered against the Petitioner on the findings arrived at by me as he had no electoral right left after his valid retirement on 15th February, 1957.

Issue No. 13.—On the above mentioned findings, the Petitioner is not entitled to any relief.

Accordingly, under section 98 of the Representation of the People Act, 1951, I dismiss the election petition under clause (a). I record under section 99, sub-section (1) clause (a) sub-clause (i) of the Act, a finding that no corrupt practice has been proved to have been committed by or with the consent of the Respondent or his agent at the election. I order under section 99, sub-section (1) clause (b) that a sum of Rs. 800 be paid by the Petitioner to the Respondent as consolidated costs of this election petition.

The 2nd May, 1958.

Sd. K. K. BANERJI,

Member, Election Tribunal, High Court Building, Allahabad.

[No. 82/336/57/11608.]

DIN DAYAL, Under Secy.

